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Grote, Janne

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Federal Office
for Migration
and Refugees



Beneficiaries of protection travelling to their country of origin: Authorization, Policies and Revocation Procedure in Germany

Study by the German National Contact Point
for the European Migration Network (EMN)

Working Paper 84

Janne Grote



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Beneficiaries of protection travelling to their country of origin: Authorization, Policies and Revocation Procedure in Germany

Study by the German National Contact Point
for the European Migration Network (EMN)

Janne Grote

Summary

Beneficiaries of international protection travelling abroad or to their country of origin have repeatedly been a subject of controversial discussion in the last few years. In principle, beneficiaries of international protection are entitled to freedom of movement as other legally residing third-country nationals. This includes travelling abroad. For this purpose, beneficiaries of international protection may obtain a refugee passport. However, travelling to the country of origin is another matter. Doing so is permissible only in specific cases or may under specific conditions rather lead to the revocation of the protection status.

The cessation clauses of the Geneva Convention relating to the status of refugees are already “based on the consideration that international protection should not be granted where it is no longer necessary or justified” (UNHCR 2011: 27). This applies, among others, to recognised refugees who voluntarily re-avail themselves of the protection of the country of their nationality or who voluntarily re-establish themselves in the country which they left or outside which they remained owing to fear of persecution (Article 1C nos. 1 and 4). The provisions of the Geneva Convention are reflected in both European law (Qualification Directive 2011/95/EU and Asylum Procedure Directive 2013/32/EU) and national law.

In national law, however, there is a special feature here, as the provisions of the Geneva Convention are mentioned under the so-called cessation grounds (Section 72 of the Asylum Act). Cessation of the protection status in Germany means, though, that the protection status lapses by law. In case of travelling to the country of origin or contacting the authorities of the country of origin this automatism contradicts with the EU Asylum Procedures Directive (Article 45 Section 5 Directive 2013/32/EU). According to the Directive Member States may only decide that international protection shall lapse by law where the beneficiary of international protection has unequivocally renounced his or her recognition as such or where the beneficiary of international protection has become a national of that Member State. This European provision is binding for national law as well. Thus, in case of travels to the country of origin or contact with the authorities of the country of origin, in Germany, contrary to the cessation of the protection status which was in the respon-

sibility of the foreigners offices, there is only one procedure in question, the revocation procedure, which implies an individual assessment of the case by the Federal Office for Migration and Refugees (Section 73 of the Asylum Act for recognized refugees, persons entitled to asylum; Section 73b for beneficiaries of subsidiary protection and Section 73c for beneficiaries of national ban on removal).

Reasons for travelling to the country of origin and for contacting the authorities of the country of origin

There may be many reasons for travelling to the country of origin and/or for contacting the authorities of the country of origin, such as illness or death of family members, family members or friends being in distress, marriage or divorce proceedings, inheritance or other personal or business matters, participation in celebrations, ‘homesickness’ and a prolonged separation from family members or leisure purposes. However, this list of potential reasons does not mean that there is automatically a reason to revoke the protection status. Rather, each case has to be assessed individually.

Revocation grounds due to the beneficiary’s travelling to the country of origin or contacting the authorities of the country of origin

The revocation grounds differ depending on the protection status, with the distinction running between recognised refugees and persons entitled to asylum on the one hand and beneficiaries of subsidiary protection on the other. In order to examine the revocation grounds, the Federal Office for Migration and Refugees usually starts a revocation procedure once it becomes aware of a beneficiary’s travelling to the country of origin or contacting the authorities of the country of origin. In most cases, the Federal Police learns of such a travel when the traveller’s passport is checked at the airport. However, foreigners authorities or other authorities may sometimes learn of such travels or authority contacts, too.

The examination of revocation grounds in the case of beneficiaries travelling to their country of origin or contacting the authorities of their country of origin has to take into account three criteria: whether the

travel or contact is voluntary, the intention to re-avail him- or herself of the protection of his or her country of origin and the actual utilization of the protection. Furthermore, the journey “has to give reason to assume that considering its length and purpose and the type of entry as well as the place of residence, it documents an omission of the interest of persecution. Therefore, a travel to the country of origin for reasons of moral duty is not sufficient; also mere visiting stays in the country of origin, which are not of longer duration, may not be considered as settlement” (Administrative Court (VG) of Oldenburg 2011: Az. 11 A 2138/11, according to UNHCR 2017: 5). Contacting diplomatic missions of the country of origin in Germany or other countries or contacting authorities in the country of origin may also lead to a revocation of the protection status. This, too, depends on whether the beneficiary of protection intends to re-avail him- or herself of the protection of the country of origin.

The revocation procedure

A distinction must first be made between the regular revocation procedure and the incident-related revocation procedure. While the first stipulates the revision of the protection status of recognized refugees and persons entitled to asylum after three years the latest, the incident-related revocation procedure is central for the focus of this study on travels to the country of origin and contact to authorities of the country of origin.

In the incident-related revocation procedure, the Federal Office for Migration and Refugees receives information about travels or contacts to authorities of the country of origin such as by the Federal Police. Subsequently, the Federal Office for Migration and Refugees involves the responsible foreigners authority and the security authorities and tries to get more information about potential revocation grounds. It will then send the person in question in writing a call for comments (Section 73 subs. 4 sentence 1 of the Asylum Act), which also includes information of the plan to revoke the protection status. The beneficiary of protection has one month to respond in writing. Often, beneficiaries of protection involve a lawyer at this point. Their response usually explains the reasons for travelling or contacting the authorities and provides supporting documents (such as a death certificate of a late family member).

The Federal Office for Migration and Refugees examines whether these explanations are credible and takes into account not only the personal, but also the legal requirements for revoking protection. If the benefi-

ciary of protection does not respond in writing within the allotted period of time, the Federal Office for Migration and Refugees will take a decision on the basis of the record as it stands. If protection is revoked, the former beneficiary of protection will be informed in writing of the decision and the foreigners office will be send a copy of that decision. Furthermore, the Federal Office for Migration and Refugees examines whether additional revocation procedures need to be initiated for other family members, if necessary. The person in question may lodge an appeal against the revocation decision with the responsible administrative court.

Consequences of a revocation decision for the residence status

A revocation of the current protection status does not mean that protection ceases completely or that the foreigner's residence is automatically terminated. If for example the entitlement to asylum or the refugee protection status is revoked, the Federal Office for Migration and Refugees will examine whether the conditions for granting subsidiary protection or a national ban on removal are in place (Section 73 subs. 3 Asylum Act). Afterwards, the foreigners authority will examine whether the conditions for another residence status (independent of asylum) are in place. If this is not the case, the foreigners authority may revoke the residence permit and ask the person in question and possibly his or her family members to leave Germany. If he or she does not follow suit, forced return measures may be taken.

Infographic “Beneficiaries of protection travelling to their country of origin”

The infographic shown on pages 40/41 provides an overview of, among other things, the individual reasons for travelling to the country of origin, the procedures to be followed if authorities become aware of such a travel, the revocation procedure for the protection status, the obligations of the beneficiary of protection to cooperate and the possible consequences on the residence status in the event of revocation of the protection status. The individual responsibilities and procedures are described in detail in the corresponding chapters of the study.

The infographic itself may be downloaded separately from the website of the German National Contact Point for Germany: www.emn-deutschland.de.

The European Migration Network

The European Migration Network (EMN) was launched by the European Commission in 2003 due to an initiative of the European Council in order to satisfy the need of a regular exchange of reliable information in the field of migration and asylum at the European level. Since 2008, Council Decision 2008/381/EC forms the permanent legal basis of the EMN and National Contact Points have been established in the EU Member States (with the exception of Denmark, which has observer status) plus Norway.

The EMN's role is to meet the information needs of European Union institutions, Member States' authorities and institutions as well as the wider public by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in these areas. The National Contact Point for Germany is located at the Federal Office for Migration and Refugees in Nuremberg. Its main task is to implement the annual work programme of the EMN. This includes the drafting of the annual policy report "Migration, Integration, Asylum" and of up to four topic specific studies, as well as answering Ad-Hoc Queries launched by other National Contact Points or the European Commission. The German National Contact Point also carries out visibility activities and networking in several forums, e.g. through the organisation of conferences or the participation in conferences in Germany and abroad. Furthermore, the National Contact Points in each country set up national networks consisting of organisations, institutions and individuals working in the field of migration and asylum.

In general, the National Contact Points do not conduct primary research but collect, analyse and present existing data. Exceptions might occur when existing data and information are not sufficient. EMN studies are elaborated in accordance with uniform specifications valid for all EU Member States plus Norway in order to achieve comparable EU-wide results. Furthermore, the EMN has produced a Glossary, which ensures the application of comparable terms and definitions in all national reports and is available on the national and international EMN websites.

Upon completion of national reports, the European Commission drafts a synthesis report with the support of a service provider. This report summarises the most significant results of the individual national reports. In addition, topic-based policy briefs, so-called EMN Informs, are produced in order to present and compare selected topics in a concise manner. The EMN Bulletin, which is published quarterly, informs about current developments in the EU and the Member States. With the work programme of 2014, the Return Expert Group (REG) was created to address issues around voluntary return, reintegration and forced return.

All EMN publications are available on the website of the European Commission Directorate-General for Migration and Home Affairs. The national studies of the German National Contact Point as well as the synthesis reports, Informs and the Glossary are also available on the national website: www.emn-germany.de



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1 Introduction

The cessation clauses of the Geneva Convention relating to the status of refugees of 1951 define the circumstances under which a protection status may be revoked. Under certain conditions, this may include contacting the authorities of the country of origin or travelling to and re-establishing oneself in the country of origin. These cessation clauses have been incorporated in national and European law. Once the German authorities learn of a travel to the country of origin, a revocation procedure is initiated, during which the Federal Office for Migration and Refugees examines whether a beneficiary of international protection has re-availed him- or herself of the protection of the country of origin and thus no longer needs German protection or whether there were urgent and credible reasons for the travel and there are no grounds to assume that the beneficiary planned to re-avail him- or herself of the protection of the country of origin. The German authorities have long experience with this issue, and there have been numerous court decisions – however, these relate mainly on appeals against a cessation (or ‘lapse’ by law) of protection until mid of 2015 (since then travels to the country of origin and contacts to the authorities of the country of origin may only lead to a revocation, see below). This study will explain under which circumstances travelling to the country of origin or contacting the authorities may be justified and which circumstances have usually led to a revocation of the protection status (in particular in Chapter 2.5).

While the issue is not new, it has repeatedly featured in the media in the last few years and has been a topic of controversial discussion, particularly under the label of “holidays” or “journeys home” (Wiebe 2017; Zeit Online 2017). Several small interpellations by the AfD (Alternative for Germany) in a number of Land parliaments (BpB 2017) also called attention to the issue. The party demanded information about travels to the country of origin and often used key words such as “holidays at home” (Bürgerschaft der Freien und Hansestadt Hamburg 2016: 1; Landtag Baden-Württemberg 2017: 1) or “journeys home” (Abgeordnetenhaus Berlin 2017; Landtag des Saarlandes 2017: 1) or “abuse of asylum status” (Niedersächsischer Landtag 2018: 1), which gave the impression that beneficiaries of protection who travelled to their countries of origin for a limited period of time abused their protection status in general.

The issue of travelling to the country of origin also featured at the European level in 2018 after the Belgian government in particular demanded better European cooperation in the framework of the data exchange about any travels of beneficiaries of international protection to their countries of origin. This demand stems from the fact that beneficiaries of protection may use airports in other Member States for travelling to their country of origin. As a result, the authorities of the country which offers protection obtain only limited information on such travels and will find it more difficult to assess the situation. While starting the travel from another country may simply be a matter of better flight connections, it may also aim at avoiding passport controls in Germany in order to circumvent a revocation procedure. At the moment, only a number of bi- and trilateral administrative cooperations and information channels between the border police authorities are in place. However, there is no central European information system for beneficiaries of protection travelling to their countries of origin from European neighbouring countries (Europäisches Parlament 2018).

There are no reliable figures concerning the number of travels by beneficiaries of protection to their countries of origin. Several other grounds may cause a revocation of the protection status which, according to the Federal Office for Migration and Refugees, are also more common as revocation grounds, such as the deception regarding the identity, becoming a German national, the permanent emigration from Germany or safety-relevant findings and crimes of the person in question. The revocation statistics of the Federal Office for Migration and Refugees cover only all revocations of protection, so that it is impossible to filter out the reasons for a travel to or a re-establishment in the country of origin or for contact with the authorities of the country of origin.

This study will first describe the general international, European and national legal frameworks concerning cessation clauses (Chapter 2.1) and then examine contact with the authorities of the country of origin (Chapter 2.2) or travels to the country of origin (Chapters 2.4 and 2.5) in more detail. In addition, it will explain the specific conditions of a revocation of the protection status of beneficiaries of subsidiary protection (Chapter 2.6). Moreover, it will give an overview of

the steps of a revocation procedure on the grounds of a beneficiary's contacting the authorities of or travelling to the country of origin. First of all, the framework conditions of the regular revocation procedure (Chapter 3.1) as well as recent developments concerning the obligation of the beneficiaries of protection to cooperate in the revocation procedure (Chapter 3.2), the relevant competencies by the single authorities, the single notifications procedures as well as the legal remedies of the person in question against a revocation decision (Chapter 3.3). Finally, the effects of a revocation on the right of residence will be explained. A revocation of the protection status by the Federal Office for Migration and Refugees will not automatically lead to a termination of the beneficiary's residence in Germany; this is a discretionary decision by the responsible foreigners authority (Chapter 3.4).

The study is based on relevant laws (such as the Asylum Act, Directive 2011/95/EU or Directive 2013/32/EU), comments on the Asylum Act, administrative regulations, handbooks and guidelines by the UNHCR and civil-society organisations, Land parliament documents and media reports. In addition, members of the Federal Police and the Division Revocation Procedure at the Federal Office for Migration and Refugees were interviewed about their responsibilities and administrative procedures.¹

This document was prepared in the framework of the European Migration Network, with similar studies being drawn up in a number of other Member States and in Norway. The national contributions and a comparative synthesis report will be successively released on the central publication page of the EMN.

¹ I would like to thank Nicolas Bodenschatz for his support and research efforts undertaken during his internship at the Research Centre of the Federal Office for Migration and Refugees.

2 Contacts with the authorities of and travelling to the country of origin

The Geneva Convention² relating to the status of refugees of 1951 is at the core of international refugee protection. It describes not only the circumstances under which protection seekers are to be recognised as refugees, but gives also reasons why a refugee recognition may be revoked. The so-called cessation clauses set out in Article 1C nos. 1 to 6 “spell out the conditions under which a refugee ceases to be a refugee” and the refugee status is terminated (UNHCR 2011: 27). According to the Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status³ by the United Nations High Commissioner for Refugees (UNHCR) these cessation clauses are “based on the consideration that international protection should not be granted where it is no longer necessary or justified” (UNHCR 2011: 27). These clauses also include provisions for contact with the authorities of the country of origin and for travelling and re-establishment in the country of origin, which are echoed in European and national law.

2.1 Cessation and revocation of protection status under international, European and national law

The cessation clauses of the Geneva Convention are as follows:

“This Convention shall cease to apply to any person falling under the terms of section A [refugee status] if:

1. **He has voluntarily re-availed himself of the protection of the country of his nationality; or**
2. **Having lost his nationality, he has voluntarily re-acquired it; or**

3. He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
4. **He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or**
5. He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
6. Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence” (Article 1 C of the Geneva Convention; emphasis added).

Nos. 1, 2 and 4 of this list are particularly relevant for this study, as they directly mention contacting the authorities of the country of origin and/or travelling (and re-establishing oneself) in the country of origin as potential reasons to terminate the protection status.

At the European level, the Geneva Convention provisions concerning beneficiaries of protection contacting the authorities of the country of origin or travelling to the country of origin have been incorporated in two Directives, the so-called Qualification Directive (Directive 2011/95/EU)⁴ and the Asylum Procedure Directive

² Convention Relating to the Status of Refugees of 28 July 1951 (Geneva Convention).

³ Under the 1951 Convention and the 1967 Protocol relating to the status of refugees.

⁴ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

(Directive 2013/32/EU)⁵. The Qualification Directive distinguishes between recognised refugees and beneficiaries of subsidiary protection when it comes to revoking the protection status. The conditions for a cessation of refugee status are as follows:

“A third-country national or a stateless person shall cease to be a refugee if he or she:

- a) **has voluntarily re-availed himself or herself of the protection of the country of nationality; or**
- b) **having lost his or her nationality, has voluntarily re-acquired it; or**
- c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
- d) **has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or**
- e) can no longer, because the circumstances in connexion with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; or
- f) being a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence” (Article 11 of the Directive 2011/95/EU; emphasis added).

Pursuant to Article 16 of the Qualification Directive, the status of beneficiaries of subsidiary protection will cease to exist under the following conditions:

“A third-country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.

In applying paragraph 1, Member States shall have regard to whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.

Paragraph 1 shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence” (Article 16 of Directive 2011/95/EU).

The Asylum Procedure Directive spells out the procedural rules which the Member States have to follow if they intend to withdraw the protection status of a beneficiary of international protection (recognised refugee and beneficiaries of subsidiary protection). If international protection is to be withdrawn, the member states “shall ensure that an examination to withdraw international protection from a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of his or her international protection” (Article 44 of the Directive 2013/32/EU). Article 45 contains the procedural rules:

“Member States shall ensure that, where the competent authority is considering withdrawing international protection from a third-country national or stateless person in accordance with Article 14 or 19 of Directive 2011/95/EU, the person concerned enjoys the following guarantees:

- a) to be informed in writing that the competent authority is reconsidering his or her qualification as a beneficiary of international protection and the reasons for such a reconsideration; and
- b) to be given the opportunity to submit, in a personal interview in accordance with Article 12(1) (b) and Articles 14 to 17 or in a written statement, reasons as to why his or her international protection should not be withdrawn.

In addition, Member States shall ensure that within the framework of the procedure set out in paragraph 1:

⁵ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

- a) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from EASO and UNHCR, as to the general situation prevailing in the countries of origin of the persons concerned; and
- b) where information on an individual case is collected for the purposes of reconsidering international protection, it is not obtained from the actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration, or jeopardise the physical integrity of the person or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

Member States shall ensure that the decision of the competent authority to withdraw international protection is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing. [...]

By way of derogation from paragraphs 1 to 4 of this Article, Member States may decide that international protection shall lapse by law where the beneficiary of international protection has unequivocally renounced his or her recognition as such. A Member State may also provide that international protection shall lapse by law where the beneficiary of international protection has become a national of that Member State” (Article 45 of the Directive 2013/32/EU)..

The clauses of the Geneva Convention and the provisions of the Qualification Directive concerning the withdrawal of protection status in case of contact with the authorities of the country of origin or travels to the country of origin have been incorporated in German law, namely in Section 72 of the Asylum Act⁶, which lists several reasons why the entitlement to asylum or the recognition of refugee status can cease to have effect:

“Recognition of asylum status and refugee status shall cease to have effect if the foreigner

- 1. voluntarily or by accepting or renewing a national passport or by any other action places himself anew under the protection of the state whose nationality he holds,**
 - 1a. voluntarily returns to and settles in the country he left or stayed away from for fear of persecution; or**
- 2. after losing his nationality has voluntarily regained it,**
- 3. has obtained a new nationality upon application and enjoys the protection of the state whose nationality he has obtained, or
- 4. renounces such recognition or withdraws his application before the decision of the Federal Office becomes incontestable.

The foreigner shall return the notification of recognition and the travel document to the foreigners authority without delay” (Section 72 of the Asylum Act).

In case of a cessation of the protection status no administrative procedure is necessary under national law; rather, the recognition ceases to have effect by law if these preconditions are in place. This means that the protection status ceases to exist as soon as the responsible foreigners authority finds that one of the cessation grounds listed above applies (52.1.4.2 of the General Administrative Regulation to the Residence Act). However, in the cases considered in this study (contact with the authorities of and travels to the country of origin), the automatic cessation runs counter to the procedural rules set out in Article 45 paragraph 5 of the Asylum Procedure Directive (Directive 2013/32/EU), which says that international protection shall only “lapse by law where the beneficiary of international protection has unequivocally renounced his or her recognition as such”. This means that the protection status can only lapse by law if the foreigner applies for German nationality (Section 72 subs. 1 no. 3 of the Asylum Act) or renounces the recognition status (Section 72 subs. 1 no. 4 of the Asylum Act). In all other cases (Section 72 subs. 1 nos. 1, 1a and 2 of the Asylum Act), the right to asylum and/or the refugee status do not lapse by law, contrary to the wording of Section 72 subs. 1 of the Asylum Act. These cases do not constitute an ‘unequivocal renunciation’. This applies to both, contact with the authorities of the country of origin and travels to the country of origin. Pursuant to the Asylum Procedure Directive, the authorities need to make sure that an individual revocation procedure is started.

⁶ Contact with the authorities of the country of origin is included as a cessation ground in Section 72 subs. 1 no. 1 of the Asylum Act. This implements Article 11 paragraph 1 letter a) of the Directive 2011/95/EU, which in turn reflects Article 1 C no. 1 of the Geneva Convention (see Marx 2017: Asylum Act Section 72 margin no. 5). Travelling to the country of origin, the second cessation ground, is the subject of in Section 72 subs. 1 no. 1a of the Asylum Act, which implements Article 11 paragraph 1 letter d) of the Directive 2011/95/EU, which in turn reflects Article 1 C no. 4 of the Geneva Convention (see Marx 2017: Asylum Act Section 72 margin no. 5).

Since, as a rule, EU Directives must be transposed into national law within two years (unless other provisions apply) and become binding afterwards even if no transposition has taken place, the Asylum Procedure Directive has been effective in Germany since the end of July 2015. That is why, in the cases on which this study focuses, the protection status will not cease to be effective pursuant to Section 72 subs. 1 no. 1 and 1a of the Asylum Act. Instead, the revocation procedure described in Section 73 of the Asylum Act will be started, as it is common practice of the Federal Office for Migration and Refugees (see below). For beneficiaries of subsidiary protection the specifications of Section 73b of the Asylum Act apply while again the specifications of Section 73c of the Asylum Act apply for beneficiaries of national ban on removal.

This has a tangible impact on the administrative practice of the foreigners authorities and the Federal Office for Migration and Refugees, as the Saxony State Ministry of the Interior explains:

“Since 21 July 2015, the Asylum Procedure Directive has been directly effective as no transposition into national law has taken place. This means that, as of 21 July 2015, no (declaratory) decisions by the foreigners authorities can be made on the basis of Section 72 subs. 1 no. 1 of the Asylum Act. To the extent that the Asylum Procedure Directive applies directly the foreigners authorities shall, as of 21 July 2015, notify the Federal Office for Migration and Refugees if there is information which might justify a revocation of the protection status” (Sächsisches Staatsministerium des Innern 2018: 2).

The Federal Office for Migration and Refugees shall then start a revocation procedure and examine whether the conditions for a revocation are in place (see Chapter 3.3).

The Asylum Act is less specific about the conditions for a revocation than about the cessation grounds. It says that “recognition of asylum and refugee status shall be revoked without delay if the conditions on which such recognition is based have ceased to exist. In particular, this shall be the case if, after the conditions on which his recognition as being entitled to asylum or refugee status is based have ceased to exist, the foreigner can no longer refuse to claim the protection of the country of which he is a citizen, or if he, as a stateless person, is able to return to the country where he had his usual residence. The second sentence shall not apply if the foreigner has compelling reasons, based on earlier persecution, for refusing to return to

the country of which he is a citizen, or, if he is a stateless person, in which he had his usual residence” (Section 73 subs. 1 of the Asylum Act).

The subsidiary protection status⁷ is to be revoked “when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required. Section 73 subs. 1 third sentence shall apply accordingly” (Section 73b subs. 1 first sentence of the Asylum Act)⁸.

While contact with the authorities of the country of origin or travels to the country of origin are not explicitly listed as grounds for a revocation, they may be grounds for a revocation of refugee or asylum status (for the specific conditions for beneficiaries of subsidiary protection see Chapter 2.6). Over the past few years and decades, the reasons for cessation have been explicitly reviewed in a number of legal proceedings on appeals lodged against the cessation (‘lapse’ by law) of a protection status. These decisions document the circumstances which provide (or do not provide) cessation grounds. Today, these are taken into account by the Federal Office for Migration and Refugees in the revocation procedure (see Chapter 2.2 for contact with the authorities of the country of origin and Chapter 2.5 for travelling to the country of origin).

Since the Asylum Procedure Directive has been binding for a few years only and the cessation grounds as set out in Section 72 of the Asylum Act have not been adapted yet, many of the quotes from guidelines, court decisions and comments on the Asylum Act used below still refer to cessation grounds (‘lapse’ by law). However, the explanations apply also to the revocation procedure and the Federal Office for Migration and Refugees for instance is oriented in the revocation procedure to the commentaries on the Asylum Act and the court decisions on cessations of the protection status. For better readability, we will not point this out in every instance.

7 A removal ban shall again been revoked “if and when the requirements are no longer met” (Section 73c subs. 2 of the Asylum Act).

8 Section 73b of the Asylum Act transposes the provisions of Article 16 of the EU Qualification Directive (Directive 2011/95/EU) into national law.

2.2 Contact with the authorities of the country of origin

If beneficiaries of protection contact the authorities of the country of origin, this may be a sign that they plan to place themselves anew under the protection of their state of origin. This may, in turn, result in a revocation procedure (Section 73 subs. 1 sentence 1 of the Asylum Act in conjunction with Section 72 subs. 1 no. 1 of the Asylum Act). Contact with the authorities may take place in the recipient country (for example via the country of origin's diplomatic mission to Germany), in a third country or in the country of origin itself.

2.2.1 Assessment of whether the contact with the authorities of the country of origin provides grounds for revocation

Any assessment of whether the contact with the authorities of the country of origin provides grounds for a revocation of the protection status must take into account a number of factors, for example whether the beneficiary of protection voluntarily⁹ makes contact and whether he or she really wants to re-avail him- or herself of the protection of the country of origin, for example by having his or her identity documents renewed. This makes it necessary to distinguish between different types of and reasons for contact with the authorities:

“For this reason, usual, purely technical contact, such as queries for school or vocational training certificates or for identity or other personal documents, shall not be regarded as a sign that the refugee plans to re-avail him- or herself of the protection of the country of origin, as they take place simply out of necessity, but not in order to re-obtain protection (margin no. 3 et seq.). [...] Routine contact with the diplomatic mission of the country of origin in order to obtain civil status or educational documentation is not tantamount to re-availing oneself of protection (Hathaway, *The Law of Refugee Status*, 1991, p. 193). No loss of rights takes place if the refugee simply tries to obtain a

single administrative act from the diplomatic mission of the country of origin, which is irrelevant for his or her relationship with the country. Temporary, purely ‘technical contact’ with such institutions does not change anything about the refugee’s need of protection, as he or she has not really turned back to the country of origin (Federal Administrative Court (BVerwG) 89, 231, 237 = EZAR 211 no. 3 = NVwZ 1992, 679; Funke-Kaiser, in: GK-Asyl-VfG, II – Section 72 margin no. 23; Hailbronner, *AuslR B 2* Section 72 Asylum Procedure Act margin no. 12). Such contact may be necessary for reasons outside the refugee’s control. For example, he or she may be obliged to apply for a divorce in his or her country of origin, as any other divorce may not be internationally recognised. Such an act cannot be considered to be a ‘voluntary re-availment of protection’ and will not deprive a person of refugee status (UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, 1979, margin no. 110)“ (Marx 2017: *Asylum Act* Section 72 margin no. 9 et seq., emphasis in the original.; see also Müller 2016: *Asylum Procedure Act* Section 72 margin no. 10; Eichler 2016: 97 et seq.).

The Federal Administrative Court also decided that, if a beneficiary of protection “marries at a diplomatic mission of his or her country of origin in Germany and renews his national passport for this purpose”, this act shall not be considered as “re-availment of the protection of the country of origin” (Federal Administrative Court (BVerwG) 1991: 9 C 126/90: 8; see also Erbs/Kohlhaas/Hadamitzky/Senge 2018: *Asylum Act* Section 72 margin no. 2). The decision of the Federal Administrative Court says:

“The same applies to the current case, where a consular marriage took place. In the same way that a refugee’s availing him- or herself of a service provided by the country of origin’s diplomatic admission in order to overcome bureaucratic obstacles to administrative acts by German authorities does not mean that the conditions set out in Section 15 of the Asylum Procedure Act are fulfilled, the right to asylum shall not be forfeit if he or she obtains administrative acts at an embassy or consulate of the persecuting state which take place once and are irrelevant for the relationship with the country. Temporary, purely ‘technical’ contact with official institutions of the persecuting state does not change anything about the foreigner’s need of protection, as he or she has not really turned back to the country of origin. Rather, the right to asylum shall lapse only if the foreigner re-establishes a permanent

9 “Protection can be withdrawn only if the refugee’s act is voluntary. This is only the case if the person can freely and deliberately make up his or her mind and act on this decision. If the refugee is non compos mentis at the time of action, this precondition is not met (Higher Administrative Court of Lower Saxony (Nieders. OVG), EZAR NF 68 no. 1)“ (Marx 2017: *Asylum Act* Section 72 margin no. 3; emphasis in the original).

legal relationship with his or her country of origin. Section 15 of the Asylum Procedure Act aims to revoke the asylum right in cases where diplomatic protection is obtained ‘as a precaution’, even though it is not necessary to resolve certain administrative issues, or where the foreigner re-avails him- or herself of the protection of the country of origin ‘without any necessity’. The key question is whether the foreigner’s behaviour indicates a change in his or her relationship with the country of origin. Applying for a new passport or an extension of the passport or a similar act is only one sign that the foreigner might wish to re-avail him- or herself of the protection of the country of origin. However, the sequence of events may counteract this impression. It depends on the individual case. If the behaviour of the person entitled to asylum suggests that he or she did not wish to regain full diplomatic protection by having his or her passport extended, the subjective element for a cessation of the entitlement to asylum pursuant to Section 15 subs. 1 no. 1 of the Asylum Procedure Act is not in place (see Federal Administrative Court (BVerwG), decision of 28 April 1964 - Federal Administrative Court (BVerwG) 1 C 31.61)” (BVerwG 1991: 9 C 126/90: 10).

Things are different if a beneficiary of protection not only extends his or her passport, but re-applies for his or her former nationality or avails him- or herself of other types of diplomatic protection. Back in 1991, the Federal Administrative Court already wrote in a decision that, “once the victim of political persecution regains his or her lost nationality or re-avails him- or herself of the diplomatic protection of his country of origin in another way or obtains another nationality (Section 15 subs. 1 nos. 1 - 3 of the Asylum Procedure Act), [...] he or she no longer [needs] the ‘substitute legal home’ offered by the Federal Republic of Germany” (BVerwG 1991: 9 C 126/90: 6). Thus, any appeal for aid to the authorities of the country of origin which relies on the foreigner’s nationality can be considered as re-availment of protection. If, for example, a person appeals for “financial help in emergency situations (e.g. after a theft) in Germany or a third country” to the authorities of the country of origin, of which he or she is a national, the “provision of such help in the framework of a state’s obligation to support its citizens” is a re-availment of protection within the meaning of Section 72 subs. 1 no. 1 of the Asylum Act. “However, the simple appeal for protection is not enough; protection must indeed be provided. Even if a person does not subjectively fear persecution any longer, the objective threat is not necessarily removed. A removal of the threat can only be assumed to have taken place if the

country grants the desired protection” (Bergmann/Dienelt/Bergmann 2016: Asylum Act Section 72 margin no. 13).

If, in contrast, a beneficiary of international protection¹⁰ “is asked by a German authority (such as the foreigners authority or the civil registry) to turn to the embassy for a passport and complies with this request, the protection status will not lapse by law [today: revocation, author’s note]. While applying for a passport or extending an existing passport may indicate that the refugee wants to re-avail him- or herself of the protection of the country of origin, [...] the acquisition of documents from the national authorities – such as birth or marriage certificates – or similar services cannot be regarded as a re-availment of protection [UNHCR Handbook, margin no. 119]” (Eichler 2016: 97).

Moreover, the assessment of any contact with the authorities of the country of origin should take into account whether the beneficiary of protection is a victim of state persecution or not. According to the Federal Administrative Court, “even accepting or extending a national passport [...] will not automatically lead to a cessation of the right to asylum. For example, a person may be the victim of local group persecution¹¹ and unable to find sufficient protection in other areas of the country of origin, which means that the group persecution is attributed to the state. Persons belonging to such a group [...] usually do not lose the diplomatic protection of their country of origin, so that a ‘re-availment’ is obviously a logical impossibility” (Federal Administrative Court (BVerwG) 1991: 9 C 126/90: 9).

10 “The examination must distinguish between asylum seekers and recognised refugees. Asylum seekers will not be issued with a travel document right away and are often obliged to apply for an extension of their passport to the consular mission. It cannot be presumed that they do so voluntarily or want to re-avail themselves of the protection of their country of origin. In contrast, recognised refugees will be issued with an international travel document pursuant to Article 38 of the Geneva Convention (see also Article 25 paragraph 1 of the Directive 2011/95/EU), which provides them with a secure international legal status and a number of specific rights in the host country and during travels to other countries [...]” (Marx 2017: Asylum Act Section 72 margin no. 14).

11 “Persecution risks for a foreigner who applies for recognition as a refugee pursuant to Section 3 of the Asylum Procedure Act in conjunction with Section 60 subs. 1 of the Residence Act can stem not only from action taken against him or her personally (individual persecution), but also from action taken against others, provided that these others are persecuted for an asylum-relevant characteristic which he or she shares with them and that he or she is in a similar situation to them in terms of place, time or the risk of repeat occurrences (risk of group persecution)” (Federal Administrative Court (BVerwG) 2009: 10 C 11.08 margin no. 13).

2.2.2 Assessment challenges

The key challenge in a revocation procedure based on contact with the authorities is to determine whether, by contacting the authorities of his or her country of origin, the beneficiary of protection really wants to re-avail him- or herself of the protection of the country of origin. The processing and examination by the Federal Office for Migration and Refugees is carried out on a case-by-case basis, on the basis of applicable case law from previous years and decades (especially case law on the cessation of a protection status which implied a 'lapse' by law in Germany), internal instructions as well as on the Basis of the commentaries on the Asylum Act and UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (UNHCR 2011). A major challenge for the Federal Office for Migration and Refugees at the moment is to process hundreds of thousands of regular revocation procedures in the coming years (see Chapter 3.1 and 3.2) due to the high influx of asylum seekers in the previous years and therefor integrating and qualifying more and more staff in the procedure.

2.3 General right to travel abroad

Beneficiaries of protection who fear persecution by government institutions of their country of origin will find it risky or downright impossible to contact the authorities of this country and therefore be unable to apply for a travel document. For this reason, beneficiaries of protection are issued with passport substitutes by the host country, which grant them the same degree of freedom of movement (including travelling abroad) which other legally resident third-country nationals enjoy (Article 28 of the Geneva Convention and Article 33 paragraph 1 of the Directive 2011/95/EU). Within the EU, beneficiaries of protection may therefore travel to other Schengen countries for up to three months within any six-month period without a visa. If they want to travel to a third country, they may require a visa, which they can regularly obtain from the diplomatic missions of the destination country. In addition, they may usually only travel to countries which have signed the Geneva Convention and recognise passport substitutes for beneficiaries of protection. Travels to the country of origin are however rejected as a general rule. The preconditions for the issuance of passport substitutes differ depending on the individual beneficiary's status.

2.3.1 Recognised refugees and persons entitled to asylum

Together with their residence title, recognised refugees and persons entitled to asylum are issued with a 'Refugee Travel Document' (also called 'Convention Passport' or 'Blue Passport'¹²). Under German law, this is equivalent to a passport substitute for foreigners pursuant to Section 4 subs. 1 no. 3 in conjunction with Section 1 subs. 3 of the Ordinance Governing Residence, which is issued for a period of up to three years. The Refugee Travel Document is also called 'Convention Passport' because this type of passport substitute is based on Article 28 of the Geneva Convention. The signatory states to the Geneva Convention (currently more than 140) commit to issue to refugees travel documents "for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require" (Article 28 paragraph 1 first sentence of the Geneva Convention; also Article 25 paragraph 1 of the Directive 2011/95/EU).

However, the freedom to travel may be restricted for beneficiaries of social security benefits pursuant to the Social Code Books II or III, which is usually the case for unemployed recognised refugees, persons entitled to asylum and beneficiaries of subsidiary protection. If they are able to work pursuant to Section 7 subs. 4a of the Social Code Book II, they will lose their right to social security benefits if they "leave an adequate time and/or spatial perimeter and are therefore not available for labour market integration" without the approval of the Federal Labour Office or the local job centres (Section 7 subs. 4a first sentence of the Social Code Book II). This approval must be granted if there is an important reason for the stay outside the time and spatial perimeters and if the labour market integration is not negatively affected (Section 7 subs. 4a sentence 2 of the Social Code Book II; such reasons might be for example to obtain medical care or for church or trade union purposes). If there is no important reason the permission may be granted at dutiful discretion if the labour market integration is not negatively affected (Section 7 subs. 4a sentence 4 of the Social Code Book II). In the latter case, the absence should "usually not exceed a total of three weeks during any given calendar year" (Section 7 subs. 4a fifth sentence of the Social Code Book II). Beneficiaries of protection who touch social security benefits under the Social Code Book II may therefore only leave the area of their local job centre for up to three weeks

¹² In Germany, this passport substitute is also called 'Blue Passport' because of its colour.

during any given calendar year and must obtain approval of their absence beforehand if they do not want to lose their right to social security benefits. However, the Federal Labour Office does not ask for the beneficiaries' destination.

2.3.2 Beneficiaries of subsidiary protection

Pursuant to the Qualification Directive, beneficiaries of subsidiary protection who cannot obtain a national passport shall be issued by the responsible authorities with "documents which enable them to travel outside their territory, unless compelling reasons of national security or public order otherwise require" (Article 25 paragraph 2 of the Directive 2011/95/EU). While a beneficiary of subsidiary protection has no right to a 'Refugee Travel Document', he or she may obtain a 'Travel Permit for Foreigners' if he or she "evidently has no passport or passport substitute and cannot obtain it in an acceptable way" (Section 5 subs. 1 of the Ordinance Governing Residence). The validity of the Travel Permit for Foreigners must not exceed the validity of the residence title. Just like the Refugee Travel Document, the Travel Permit for Foreigners is not valid for travelling to the foreigner's country of origin; a notice to this effect must be included in the document (SMBI NRW 2018). The time limit of three weeks, which applies to any absence of beneficiaries of social security benefits pursuant to the Social Code Book II who are able to work, also applies to beneficiaries of subsidiary protection, recognised refugees and persons entitled to asylum (Section 7 subs. 4a fifth sentence of the Social Code Book II; see Chapter 2.3.1).¹³

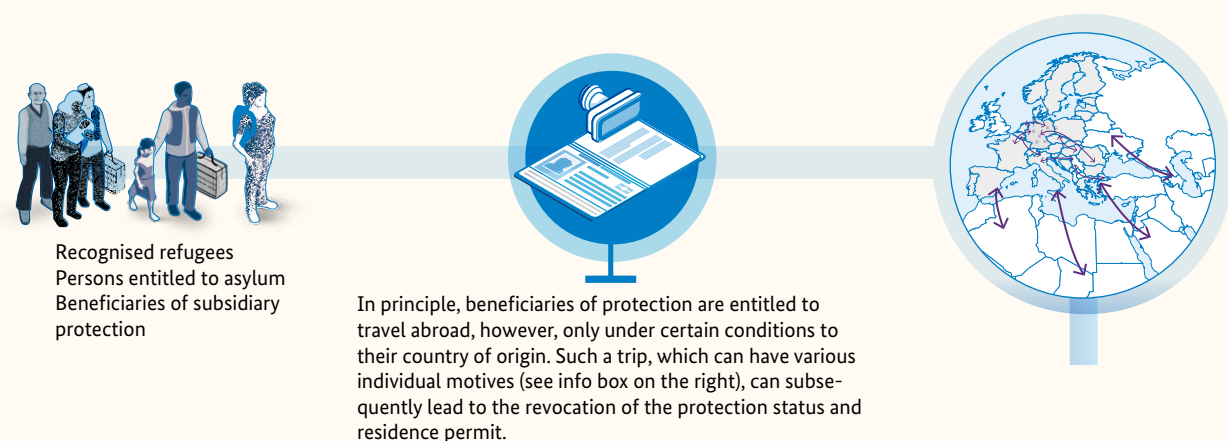
¹³ A suspension of removal (including a suspension of removal for education purposes) does not permit its holder to travel abroad.

2.4 Travelling to the country of origin

While recognised refugees or persons entitled to asylum and beneficiaries of subsidiary protection may, in principle, travel abroad and are issued with passport substitutes for this purpose, travelling to or re-establishment in the country of origin may lead to a revocation procedure, which may ultimately result in a revocation of the protection status and measures to terminate the foreigner's stay in Germany (see Figure 1). This chapter will shed more light on the framework conditions for travelling to the country of origin.

The foreigners authority may grant a special permission for travels abroad. Without this permission, any travel abroad during the period for which removal is suspended will result in the suspension's lapse. This rule does not apply to students whose removal has been suspended. They may travel abroad in the framework of a student trip organised by their (vocational) school and accompanied by a teacher of that school. For this purpose, they must be registered on a 'student list', which is examined by the responsible foreigners authority. This authority shall make a note on the list that the suspension of removal remains in place after the students' return to Germany (Section 22 subs. 2 of the Ordinance Governing Residence). This is one case where the suspension of removal will not lapse even if the foreigner leaves Germany. Persons whose asylum procedure is still pending and who hold a permission to remain pending the asylum decision are, as a rule, not allowed to travel and need permission by the responsible foreigners authority to leave their assigned area. (Section 58 subs. 1 first and second sentences of the Asylum Act). These provisions also apply to a travel abroad. If a foreigner leaves the country without having obtained permission beforehand, the asylum procedure will usually be stopped. In case of students, the exceptions for school trips set out in Section 22 subs. 2 of the Ordinance Governing Residence will apply.

Figure 1: Travels of beneficiaries of international protection to a foreign country or their country of origin



Source: Whole infographic on pages 40/41; © Burak Korkmaz.

2.4.1 Notification before the travel, permission or prohibition

Beneficiaries of protection are not generally obliged to notify the authorities of a travel to their country of origin. The authorities note that “there are no legal grounds for a general administrative prohibition of travels to the country of origin. Consequently, the foreigners authorities may not prohibit them in principle” (Bürgerschaft der Freien und Hansestadt Hamburg 2016: 1 et seq.). Beneficiaries of protection sometimes ask the Federal Office for Migration and Refugees whether a travel to their country of origin can be permitted beforehand or whether they can receive a guarantee that no revocation procedure is started as the reasons for travelling to the country of origin are important and credible. However, there are no legal grounds for giving such a general guarantee. The Federal Office for Migration and Refugees only acts once the beneficiary of protection has returned to Germany, not least because the existence of any actual (in contrast to presumed) persecution can be determined only during and after and not before the stay in the country of origin. A prohibition of the travel is possible only under specific circumstances by the foreigners authority, for example because the foreigner does not hold the documents or permissions necessary for entering the country of origin or a neighbouring country

(Section 46 subs. 2 of the Residence Act in appropriate application of Section 10 of the Passport Act), because the foreigner was refused a passport (Section 7 subs. 1 of the Passport Act) or because the passport was revoked (Section 8 of the Passport Act). This includes, for example, passport and travel refusals on the grounds of intelligence that the foreigner plans to participate in preparing a serious violent offence endangering the state or a terrorist attack in his or her country of origin (Section 7 subs. 1 no. 10 in conjunction with Section 89a subs. 2a of the Criminal Code). This is a recent provision, which entered into force on 20 June 2015 in the framework of the ‘Act amending the Prosecution of the Preparation of Serious Violent Offences endangering the State’ because a rising number of German and “foreign terrorist fighters travel(led) to crisis areas, in particular to Syria” (Deutscher Bundestag 2015). Under these and other circumstances, a passport may be refused or revoked in order to prevent the travel.

2.4.2 Information about potential consequences of a travel to or contact with authorities of the country of origin

On request, asylum applicants and beneficiaries of protection will be informed by the responsible authorities about the framework conditions about a travel to

Table 1: Information about framework conditions and potential consequences of contact with the authorities of or a travel to the country of origin

Means used to inform beneficiaries of protection	Contacting authorities of the country of origin	Travelling to the country of origin
It is indicated on beneficiaries’ travel document		<ul style="list-style-type: none"> The Refugee Travel Document contains a note which says that the document is valid for all countries except the country of origin. This note is in German, English and French and uses the three-letter international country code (ISO-3166 Alpha-3) to refer to the country of origin (e.g. IRQ for Iraq or SYR for Syria).
Pro-active information by the authorities in writing	<ul style="list-style-type: none"> Only once a revocation procedure is started, the Federal Office for Migration and Refugees informs the foreigner of its revocation intention in writing. The foreigner then has one month to respond in writing (Section 73 subs. 4 of the Asylum Act). The letter by the Federal Office for Migration and Refugees is in German. 	<ul style="list-style-type: none"> Only once a revocation procedure is started, the Federal Office for Migration and Refugees informs the foreigner of its revocation intention in writing. The foreigner then has one month to respond in writing (Section 73 subs. 4 of the Asylum Act). The letter by the Federal Office for Migration and Refugees is in German.
Pro-active oral information by the authorities		
Information by the authorities on request	<ul style="list-style-type: none"> If foreigners ask orally or in writing whether they are allowed to contact an authority of their country of origin and/or about the potential consequences of doing so, the authority shall inform them orally or in writing about the framework conditions and the conditions of a potential revocation. 	<ul style="list-style-type: none"> If foreigners ask orally or in writing whether they are allowed to travel to their country of origin and/or about the potential consequences of doing so, the authority shall inform them orally or in writing about the framework conditions and the conditions of a potential revocation.




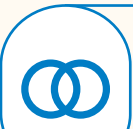



or contact with the authorities of their country of origin and the fact that these actions may form grounds for a revocation of the protection status or suspension of the asylum procedure (in the case of asylum applicants). There is no pro-active information or standardised information at a certain stage of the procedure. However the refugee travel document contains a note which says that the document is valid for all countries except the country of origin (see Table 1). Information about framework conditions and potential consequences is not provided until the Federal Office for Migration and Refugees starts a revocation procedure on the grounds of a travel to and/or contact with the authorities of the country of origin and by a call for comments sending in writing to the person in ques-

tion, which also includes information of the plan to revoke the protection status (see Table 1). With regard to information, no difference is made between recognised refugees or persons entitled to asylum or beneficiaries of subsidiary protection.

2.4.3 Reasons for travelling to the country of origin

There is no central register of the reasons why beneficiaries of protection want to travel to their country of origin. As a result, it is impossible to state reliably how often the individual reasons are cited. The list of rea-

Figure 2: Individual reasons for travelling to the country of origin

	<ul style="list-style-type: none"> • Illness of family members,
	<ul style="list-style-type: none"> • Death of family members and the organisation of or participation in funerals (Bürgerschaft der Freien und Hansestadt Hamburg 2016: 2; Landtag des Saarlandes 2017: 2),
	<ul style="list-style-type: none"> • “Business affairs” (Landtag Baden-Württemberg 2017: 5; Bergmann/Dienelt/Bergmann 2016: Asylum Act Section 72 margin no. 13),
	<ul style="list-style-type: none"> • Marriage (Higher Administrative Court of North Rhine-Westphalia (OVG NRW) 1990: 18 A 10060/88, also Erbs/Kohlhaas/Hadamitzky/Senge 2018: Asylum Act Section 72 margin no. 2; Eichler 2016: 97 et seq.), • Divorce (Eichler 2016: 97 et seq.), • Participating in the marriage of family members (Administrative Court (VG) of Aachen 2016: Az. 7 K 1690/14 A),
	<ul style="list-style-type: none"> • Clarifying inheritance issues, for example after a death in the family (Eichler 2016: 97 et seq.; see also Landtag Baden-Württemberg 2017: 6, which mentions “personal affairs”),
	<ul style="list-style-type: none"> • “Helping family members or friends to flee” (Federal Administrative Court (BVerwG) 1991: 9 C 126/90: 9 and Administrative Court (VG) of Köln 1983: Az. 2 K 13729/81) or “supporting family members or friends in an emergency situation” (Landtag des Saarlandes 2017: 2),
	<ul style="list-style-type: none"> • Checking “risks to personal security in the country of origin” (Hathaway 1991: 199, in: Marx 2017: Asylum Act Section 72 margin no. 25), • Re-traumatisation, discrimination or fear of persecution in Germany after having met former tormentors* (Stuttgarter Nachrichten 2018), • Long separation from family, ‘homesickness’, leisure purposes (Hoffmann 2018; Wiebe 2017).

* An example of the latter is the case of Ashwaq T., a Yezidi woman who was enslaved by the Islamist terrorist organisation IS until she managed to flee from Iraq. After having been granted protection in Germany, she met her IS tormentor and returned for several months to Iraq before travelling back to Germany (Stuttgarter Nachrichten 2018).

sons given below is based on the expertise of the Revocation Procedure Division at the Federal Office for Migration and Refugees, on statements made during court procedures and on statements in guidelines and handbooks (Eichler 2016: 96 et seq.).

Individual reasons for travelling to the country of origin may be the illness or death of family members, marriage or divorce, clarifying inheritance issues, business affairs, ‘homesickness’ and other personal reasons or also distressing experiences during their stay in Germany (see Figure 2).

It is not possible to draw any conclusions about possible grounds for revocation from this list. Rather, as described in Chapter 2.1, each case must be examined individually and the reasons and circumstances of the travel need to be evaluated. Several preconditions must be met before the protection status is revoked on the grounds of a travel to the country of origin. This is explained in more detail in the following chapter.

2.5 Assessment of grounds for a revocation of protection status

Now that travelling to the country of origin or contacting the authorities of the country of origin are no longer cessation but revocation grounds and other authorities are obliged to pass on knowledge of such travels to the Federal Office for Migration and Refugees in order to start a revocation procedure, the Revocation Procedure Division of the Office will examine whether the grounds for a revocation are indeed in place (see Chapter 3).

The Federal Office for Migration and Refugees will examine the circumstances of and reasons for the foreigner’s travelling to or contacting the authorities of his or her country of origin in order to assess whether he or she intends to re-avail him- or herself of the protection of the country of origin (see Figure 3). In doing so, the Federal Office’s staff rely on a number of court decisions taken in the last few years and decades mainly on the cessation of the protection status, which is transferred to the revocation examination, on commentaries on the Asylum Act and on handbooks and guidelines of the UNHCR (2011) concerning the revocation of protection status. Fundamental and specific circumstances need to be taken into account, as we will explain in more detail below.

Figure 3: Selection of criteria assessed in the revocation procedure



Selection of review criteria in the revocation procedure

Fundamental criteria:

- Voluntariness of the travel
- Intention to re-avail him- or herself of the protection of the country of origin
- Effective re-availment of protection

Specific criteria:

- Length and frequency of travels
- Occasion (see individual motives)
- Way of entering the country (e.g. without the knowledge of the authorities of the country of origin)
- Place of stay

2.5.1 Fundamental preconditions

When assessing grounds for revocation in a case where a beneficiary of protection has travelled to or contacted the authorities of the country of origin, three aspects need to be considered:

- the refugee must act of his or her own free will when deciding to re-avail him- or herself of the protection (voluntariness [...]),
- the refugee must act with the intention to re-avail him- or herself of the protection of the country of origin (intention) and
- the refugee must indeed be granted this protection (re-availment)” (Marx 2017: Asylum Act Section 72 margin no. 6; emphasis in the original).

For example, a travel to the country of origin is not to be deemed voluntary if “the return to or subsequent establishment in the country was the result of force, threats or fraud” (Fleuß 2018: Asylum Act Section 72 margin no. 17). Any coercion may stem from “the authorities of the country of origin, of a third country or of the Federal Republic of Germany or from private-sector third parties” (Marx 2017: Asylum Act Section 72 margin no. 7). If a beneficiary of protection who has travelled voluntarily to the country of origin in order to stay there for a short time for valid reasons is caught and kept prisoner by official institutions or rebel groups for months before he or she can return to Germany, the fact that he or she initially travelled to the country of his or her own free will does not pro-

vide grounds for revocation, as events have shown that the risk of persecution persists.

Overall, for deciding whether grounds for revocation exist, the travel “has to give reason to assume that considering its length and purpose and the type of entry as well as the place of residence, it documents an omission of the interest of persecution. Therefore, a travel to the country of origin for reasons of moral duty is not sufficient; also mere visiting stays in the country of origin, which are not of longer duration, may not be considered as settlement (Administrative Court (VG) of Oldenburg 2011: Az. 11 A 2138/11, according to UNHCR 2017: 5; see also Administrative Court (VG) of Düsseldorf 2000: 16 K 3261/99 A, in: Marx 2017: Asylum Act Section 72 margin no. 21 and Administrative Court (VG) of Köln, BeckRS 2015, 55164, in: Fleuß 2018: Asylum Act Section 72 margin no. 15).

Numerous court decisions in connection with travels to the country of origin, which, however, mainly still relate to lawsuits until mid-2015 against the cessation of the protection status, give more insight into potential grounds for revocation. The Federal Office for Migration and Refugees in its responsibility for revocation procedures again, orientates itself towards these court rulings on the cessation of a protection and applies these to the revocation decision.

2.5.2 Length of the travel or re-establishment in the country of origin

The courts have repeatedly underlined that a simple travel to the country of persecution which is planned for a set period of time is not automatically a sufficient reason for revocation (Higher Administrative Court of Bavaria (BayVGH) 1962: no. 87 VIII 62; Administrative Court (VG) of Hamburg, InfAuslR 1980, 131; in: Marx 2017: Asylum Act Section 72 margin no. 22). Rather, it is necessary to differentiate between permanent returns, regular or repeated travels and one-off or irregular travels to the country of origin.

Permanent return

A return with the intention of re-settling permanently in the country of origin “is probably the most obvious signal that a refugee is no longer afraid of persecution. He or she clearly indicates that he or she is willing to trust in the country of origin’s readiness to protect him or her” (Hathaway 1991: 197, in: Marx 2017: Asylum Act Section 72 margin no. 19 et seq.).

Regular travels

Regular or repeated travels to the country of origin “over a longer time are to be treated equally with re-establishment in the country of origin, particularly if the refugee avails him- or herself of social security benefits and institutions which are normally reserved for citizens of the country of origin” (Marx 2017: Asylum Act Section 72 margin no. 21). However, settlement – the second criterion mentioned in Section 72 subs. 1 no. 1a, besides return – presupposes “a certain length of stay, which is at least intended. This criterion is, in principle, not fulfilled if the stay is temporary for visiting purposes” (Bergmann/Dienelt/Bergmann 2016: Asylum Act Section 72 margin no. 11-15). If a beneficiary of protection repeatedly travels to his or her country of origin for two or three weeks at a time and does not experience repression or persecution by the authorities, it is likely that he or she will not be persecuted by the authorities (see Higher Administrative Court of Baden-Wuerttemberg (VGH BW) 1986: A 13, p. 77/85).

Back in 1962, the High Administrative Court of Bavaria already wrote that “[...] the return in the absence of external coercion and the acceptance of a job with a state enterprise suggest that the refugee no longer fears persecution, regardless of the refugee’s intention of returning to the Federal Republic at some later date (Higher Administrative Court of Bavaria (BayVGH), ruling of 11.09.1962 – no. 87 VIII 62)” (Marx 2017: Asylum Act Section 72, margin no. 22). The length and regularity of trips may, combined with other features, serve as an indication of settlement, which may “manifest itself in the form of establishing residence, contacting authorities of the country of origin or availing oneself of state services” (Müller 2016: Asylum Procedure Act Section 72 margin no. 16). It is the beneficiary of protection who has to prove, “without exemption”, that he or she is not re-availing him- or herself of the protection of the country of origin (Marx 2017: Asylum Act Section 72 margin no. 24).

Irregular or one-off travels

In contrast, irregular, rare, one-off and “short-term” visits (Bergmann/Dienelt/Bergmann 2016: Asylum Act Section 72 margin no. 13) or “a visit of a few weeks are, as such, too short to draw the conclusion that the foreigner is permanently re-settling in the country of origin” (Hathaway 1991: 199, in: Marx 2017: Asylum Act Section 72 margin no. 24).

2.5.3 Illness of and care for sick family members or friends

When assessing the grounds of revocation, the authorities need to “check carefully whether the refugee travelled to his or her country of origin in order to see sick family members or friends or help close family or friends to flee” (Marx 2017: Asylum Act Section 72 margin no. 26). Those circumstances would not necessarily lead to a revocation. If, however, the beneficiary of protection stays for a longer time, such as three months, and claims later on that the illness and death of a parent was the reason for the travel, this does not justify the relatively long stay in the country. In such a case, the justification may be regarded as implausible, or even if it is plausible (and, for example, corroborated by documentation of a stay in hospital and the necessity to provide care), the question may arise whether the beneficiary of protection has not re-availed him- or herself of the protection of the country of origin, provided that he or she has not experienced persecution during this time. While the reasons for a stay may be convincing and not provide grounds for revocation, the length of the stay or other circumstances may suggest that the beneficiary of protection does not need to fear persecution any longer and/or has re-availed him- or herself of his or her own free will of the protection of the country of origin, which means that the protection status will be revoked even though the reasons for the travel are plausible.

2.5.4 Marriage and divorce

Again, the circumstances are key when it comes to a travel to the country of origin for the purpose of marriage. For example, the residence status of the partner in the country of origin may make it impossible to marry outside the country (Eichler 2016: 97 et seq.). If there are no adverse circumstances and a beneficiary of protection travels to the country of origin even though he or she “could have been married at a German civil registry office”, the protection status may be revoked (formerly cease to exist), as it may be presumed that the person does not need to fear persecution any longer (Higher Administrative Court of North-Rhine Westphalia (OVG NRW) 1990: 18 A 10060/88). In contrast, the Federal Administrative Court ruled in 1991 that a marriage at a diplomatic mission of the country of origin in Germany and the necessary application for a passport extension did not constitute a voluntary and obvious renunciation of the protection status (Federal Administrative Court (BVerwG)

9 C 126/90; see Chapter 2.1). In case of a divorce, too, the key question is whether the act must necessarily take place in the country of origin or not (Eichler 2016: 97 et seq.).

2.5.5 ‘Illegal’ stay in the country of origin

In addition, the authorities need to find out whether the authorities of the country of origin knew about the returnee’s entry and stay and “did not take measures against him or her (Higher Administrative Court of Baden-Wuerttemberg (VGH BW), EZAR 214 no. 1; Administrative Court (VG) of Gießen, NVwZ-Beil. 2000, 29, 30)” (Marx 2017: Asylum Act Section 72 margin no. 22). “If a close examination shows that the authorities of the country of origin knew of the refugee’s establishment and that they did not take action to persecute him or her, a refugee persecuted by official authorities clearly does not need protection any more. He or she cannot argue convincingly any more that he or she fears persecution” (Marx 2017: Asylum Act Section 72 margin no. 24). In contrast, “an ‘illegal’ stay, even one of some duration, [...] does not constitute settlement” (Müller 2016: Asylum Procedure Act Section 72 margin no. 18). The Marx commentary on the Asylum Act says: “Anyone who travels to the country of origin only for a short time, goes, for example, into hiding and has taken sufficient care to ensure that the authorities do not learn of his or her stay, will not lose his or her protection status. And even if the refugee does not hide from the authorities which he or she fears, Article 1 C no. 4 of the Geneva Convention only permits a revocation of the refugee status after he or she has voluntarily contacted the authorities of the country of origin (Schweizerische Asylrekurskommission, EMARK 1996, no. 9)” (Marx 2017: Asylum Act Section 72 margin no. 26).

2.5.6 Persecution by non-state actors and travelling to autonomous areas in the country of origin

A person may also be recognised as a refugee (Section 3 subs. 1 of the Asylum Act) if the persecution does not come from the state, but from parties or organisations which control the state or substantial parts of the state’s territory, or from non-state agents, if the state, the parties or organisations (including international organisations) are demonstrably unable or unwilling to offer protection from the persecution within the meaning of Section 3d of the Asylum Act, irrespec-

tive of whether a power exercising state rule exists in the country (Section 3c of the Asylum Act).

This means that, when examining a travel to the country of origin for grounds of revocation, the authorities need to make sure that the beneficiary of protection “does not have to fear threats or danger from non-state agents either. A temporary return to the country of origin does not provide sufficient ground for the assumption that he or she is not at risk of persecution any more. If the refugee is a victim or group persecution [see the definition in footnote 11; author’s note] or has suffered persecution from non-state agents, the fact that the authorities know about his or her stay in the country of origin is not sufficient to indicate that he or she does not need to fear persecution any more. Once again, permanent settlement in the country of origin is the only reason to assume that the refugee does not need to fear group persecution any more. [...] It is necessary that the country of origin really controls the area which the refugee enters (Higher Administrative Court of Bavaria (BayVGH), InfAuslR 1998, 519; Administrative Court (VBG) of Magdeburg, InfAuslR 2000, 40, 43)” (Marx 2017: Asylum Law Section 72 margin no. 23).¹⁴

The administrative court at Ansbach annulled a revocation decision by the Federal Office for Migration and Refugees and said that “the fact that the plaintiff did not come to harm when he travelled to Suleymania [a city in the Kurdistan Region or Iraq; author’s note] and back in order to see his mother in hospital in 2006 does not contradict the existence of a general threat” (Administrative Court (VG) of Ansbach 2007: 3 K 05.30533; see also Administrative Court (VG) of Gießen 1999: 2 E 2269/99).

A “temporary return to an area which is administered by local authorities under the protection of the United Nations and not under the control of the central government [cannot] be regarded as contacting the authorities of the country of origin either (Schweizerische Asylrekurskommission, EMARK 1996 no. 9 on protected areas in Northern Iraq; Administrative Court (VG) of Gießen [21.09.1999 – E 2269/99], NVwZ-Beil. 2000, 29, 30; see also Federal Administrative Court (BVerwG) [19.09.2000 – 9 C 12/00], NVwZ 2001, 335, 336 = InfAuslR 2001, 532 = EZAR 214 no. 13; Administrative Court (VG) of Göttingen, InfAuslR 2000, 37, 389)” (Marx 2017: Asylum Act Section 72 margin no. 26).

2.5.7 Business, ownership and inheritance reasons and other reasons

Business-related travels to the country of origin may be “regarded as equivalent” to a settlement within the meaning of Section 72 subs. 1 no. 1a of the Asylum Act (Bergmann/Dienelt/Bergmann 2016: Asylum Act Section 72 margin no. 13).

Again, the situation becomes more complex if the persecutors (the state or non-state agents) threaten to “dispossess” the refugee. If a beneficiary of protection travels to the country of origin for a limited time to resolve the situation, the threat serves as an indication that he or she does not do so voluntarily. This needs to be taken into account (Bergmann/Dienelt/Bergmann 2016: Asylum Act Section 72 margin no. 14).

2.5.8 Repeated travels and repeated revocation procedures

Since repeated travels to the country of origin may be a sign that the beneficiary of protection intends to re-avail him- or herself of the protection of the country of origin, any initiated revocation procedures will be archived in the file for the individual, regardless of their outcome. If the beneficiary repeatedly leaves for his or her country of origin and returns to Germany and the Federal Office for Migration and Refugees is aware of this, the revocation procedure staff will find the relevant information in the file and can take it into account for their assessment, including the plausibility examination of the reasons for the trip.

A second or repeated travel is not necessarily a clear sign of re-availment of protection or lack of fear of persecution, not even when it takes place quickly after the first travel. According to the Federal Office for Migration and Refugees, a death in the family may, for example, make a second travel necessary as inheritance issues may need to be resolved. The second travel is undertaken for a clear purpose, which is defined in terms of time, sometimes space and context and does not provide a sufficient indication of the refugee’s desire to re-avail him- or herself of the protection of the country of origin.

¹⁴ See also Higher Administrative Court Munich (VGH München) BeckRS 1998, 19034 margin no. 1; 2007, 37764 margin no. 53; in: Fleuß 2018: Asylum Act Section 72 margin no. 14.

2.5.9 Challenges during the revocation procedure

In the past, the foreigners authorities have repeatedly emphasised during their examinations of potential cessation grounds that it was “often impossible” to verify the reasons the beneficiaries of protection had given for their travelling to their country of origin (Landtag des Saarlandes 2017: 2). While the “individuals were asked about the reason for their travel and its circumstances”, it was “usually not possible to verify the truth of their claims” (Bürgerschaft der Freien und Hansestadt Hamburg 2016: 2). In order to establish grounds for cessation (or since mid-2015 to initiate a revocation procedure at the Federal Office for Migration and Refugees), the foreigners authorities were obliged to “find out in the individual case, even if it is difficult to get to the real reasons for a specific action, whether the individual really intended to re-avail him- or herself of the protection of the country of origin by returning to it. If such an intention is suspected, the refugee must be given an opportunity to refute the suspicion [Cessation Guidelines, para. 9(b)]” (UNHCR 2017: 3).

Staff of the Revocation Procedure Division at the Federal Office for Migration of Refugees report similar experiences. As a rule, examining the explanations provided by the beneficiaries of protection for plausibility and checking the documents requires a careful assessment of the individual case, not least because a revocation of protection status has far-reaching consequences. The individual steps of the procedure at the Federal Office for Migration and Refugees are described in Chapter 3.

2.6 Particular rules for beneficiaries of subsidiary protection

Protection seekers are granted subsidiary protection if they can show substantial grounds for believing that they might face a real risk of suffering “serious harm” in their country of origin. This includes the death penalty or execution, torture or inhuman or degrading treatment or punishment, or serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict (Section 4 subs. 1 of the Asylum Act).

The protection status is to be revoked when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required (Section 73b of the Asylum Act). However, the Federal Office for Migration and Refugees has to consider whether the change of circumstances is so significant and lasting that the beneficiary of subsidiary protection no longer faces a real risk of serious harm in the sense of the reasons for providing protection pursuant to Section 4 subs. 1 of the Asylum Act (Section 73b subs. 1 and 2 of the Asylum Act). “New facts [in the sense of] far-reaching political change must have created a new basis for the forecast of risk” (Bergmann/Dienelt/Bergmann 2018: Asylum Act Section 73b margin no. 3; see also : Fleuß 2018: Asylum Act Section 73b margin no. 5).

2.6.1 Protection granted on the grounds of a risk of serious harm due to the death penalty, torture or inhuman or degrading treatment of punishment (Section 4 subs. 1 nos. 1 and 2 of the Asylum Act)

If subsidiary protection is granted for one of the reasons listed in Section 4 subs. 1 nos. 1 and 2 of the Asylum Act (threat of serious harm in the country of due to the death penalty or execution, torture or inhuman or degrading treatment of punishment), the conditions for a revocation are the same as for recognised refugees or persons entitled to asylum.

For example, on 12 February 2016 the administrative court at Aachen rejected the appeal of a Sri Lankan national against the revocation of a removal ban pursuant to Section 60 subs. 2 of the Residence Act, which was, at the time, the equivalent of the current subsidiary protection status pursuant to Section 4 subs. 1 no. 2 of the Asylum Act (Az. 7 K 1690/14 A). The Federal Office for Migration and Refugees revoked the protection status due to a change of circumstances. Thereby, the Federal Office examined whether the person in question is still at risk of persecution (danger on return) and thereby took into account that the individual had travelled to the country of origin for a (public) marriage celebration. This fact again had made it “obvious”, that the person in question “was not facing persecution in his country of origin” (Administrative Court (VG) of Aachen 2016: 7 K 1690/14.A). The foreigners authority, which gained knowledge about the travel by a marriage certificate, had informed the Federal Office for Migration and Refugees. The admin-

istrative court at Aachen ruled that the revocation of subsidiary protection was justified. The decision holds up the revocation decision by the Federal Office for Migration and Refugees and states:

“There are no reasons to assume that the plaintiff is subject to increased danger. Rather, the issuance of a passport in 2009 and his marriage in the country of origin in December 2012 suggest that the security forces do not suspect him as an individual of having LTTE contacts and that his return as a ‘(young)’ Tamil would not put him at a risk of serious harm by his country of origin, as the defendant has spelled out in the decision which is the subject of this appeal [...] The plaintiff confirmed during the oral proceedings in court that he was able to smoothly enter and leave the country for his marriage via the airport at Colombo. Moreover, he did not mention that he had any problems with the authorities during the several weeks he stayed in his country of origin” (Administrative Court (VG) of Aachen 2016: 7 K 1690/14 A).

2.6.2 Protection granted on the grounds of a risk of serious harm due to an internal armed conflict (Section 4 subs. 1 no. 3 of the Asylum Act)

The situation is different if subsidiary protection was granted on the grounds of an internal armed conflict (Section 4 subs. 1 no. 3 of the Asylum Act; for example the conflict in Syria). In this case, the individual reasons for a travel to or contact with the authorities of the country of origin are less important for a revocation decision, as it needs to be taken into account, whether the circumstances have changed essentially and not only temporarily, so that the beneficiary of subsidiary protection actually no longer runs the risk of serious harm according to Section 4 subs. 1 (Section 73 subs. 2 of the Asylum Act). Rather, the internal conflict situation in the country of origin must have changed “significantly” and “lastingly” to justify a revocation of the protection status (Bergmann/Dienelt/Bergmann 2018: Asylum Act Section 73 margin no. 5). Unless other reasons for a revocation come to light during the revocation procedure or the general situation in the country of origin changes significantly, the subsidiary protection status cannot be revoked only on the grounds of contact with the authorities of or a travel to the country of origin if Section 4 subs. 1 no. 3 of the Asylum Act applies.

3 The revocation procedure

This chapter describes the individual administrative and procedural steps of the revocation procedure, whereby a distinction must first be made between the regular revocation procedure after three years the latest and the incident-related revocation procedure (such as travels to the country of origin). Chapter 3.1 deals with the regular review of protection status, whereas Chapter 3.2 describes the foreigners' obligations to cooperate, which was undergoing a legislative revision at the time this study was finalized. Subsequently, the responsibilities of the different authorities are documented as well as a chronological sequence of the single steps in the incident-related revocation procedure (Chapter 3.3). The final sub-chapter (Chapter 3.4) explains the effects of a revocation on the residence status of the beneficiaries of protection and their families.

3.1 Regular review after three years the latest

The Federal Office for Migration and Refugees will review the status of recognised refugees and persons entitled to asylum after three years at most (Section 73 subs. 2A of the Asylum Act). The background to this measure is that for the first time after three years, the residence status can become a permanent one by issuing a settlement permit and that in this context it should be re-examined whether the prerequisites for protection still exist. The Federal Office for Migration and Refugees will create a revocation file and send a questionnaire to the responsible foreigners authority. Also the security authorities are involved and a check with the database takes place. Both the foreigners authority and the security authorities are asked to provide information on any facts that may be specific to and relevant for the revocation procedure (for more details on the procedure see Chapter 3.3). If there is new information about potential grounds for revocation, the Federal Office for Migration and Refugees will start the formal revocation procedure and examine the facts. The person in question is informed in writing about the procedure and about the reasons for a potential revocation (for example criminal offences). He or she has one month to respond in writing. If he or she does not do so, the Federal Office for Migra-

tion and Refugees takes a decision on the basis of the record as it stands. In view of the evidence (travelling or contact with the authorities), this usually results in a revocation (Section 73 subs. 4 of the Asylum Act; Eichler 2016: 108; see also Chapter 3.3.6). If the conditions for a revocation or a withdrawal are met, the Federal Office for Migration and Refugees will inform the foreigners authority (Section 73 subs. 2a second sentence of the Asylum Act) and the foreigner (Section 73 subs. 4 third sentence of the Asylum Act) of the result. Once the entitlement to asylum or recognition of the refugee status, withdrawn or no longer in effect for another reason, the person in question has to return the notification of recognition and his or her travel document to the foreigners authority without delay (Section 73 subs. 6 in conjunction with Section 72 subs. 2 of the Asylum Act).

3.2 Obligations to cooperate during the revocation procedure

Up until mid-December 2018, the national law did not stipulate an explicit obligation to cooperate during the revocation and withdrawal procedure for beneficiaries of protection. There was no legally secure possibility to summon the person in question to an interview and/or applying identification measures, as in the initial asylum procedure, in order to clarify the facts of the case. There was an exception to this rule if the first asylum procedure did not include identification measures. In such cases, the obligation to cooperate once established (Section 15 in conjunction with Section 16 subs. 1 sentence 1 of the Asylum Act) continued to have effect even after the asylum procedure had been concluded and the person concerned could be summoned to the identification measures under threat of administrative compulsion.

On December 12, 2018 the Third Act Amending the Asylum Act entered into force introducing an expansion of the cooperation obligations of beneficiaries of protection in revocation and withdrawal procedures (Deutscher Bundestag 2018a: 2). The bill foresees a change of Section 73 of the Asylum Act and therewith

applies to revocation and withdrawal procedures for recognized refugees and persons entitled to asylum as well as beneficiaries of subsidiary protection (in conjunction with Section 73b subs. 4 of the Asylum Act) or where a national ban on removal is in place (in conjunction with Section 73c subs. 3 of the Asylum Act). The newly introduced Section 73 subs. 3a states the following:

“Upon request by the Federal Office, the foreigner is personally obliged to cooperate in the examination of the existence of the prerequisites for revocation or withdrawal of recognition as a person entitled to asylum or the granting of refugee status, insofar as this is necessary for the examination and reasonable for the foreigner. Section 15 subs. 1 sentence 2, subs. 2 numbers 1, 4, 5 and 7 and subs. 3 as well as Section 16 subs. 1 to 4 and subs. 6 shall apply *mutatis mutandis* with regard to securing the identity by means of identification measures (Section 16 subs. 1 sentences 1 and 2) with the proviso that it is only permissible if the identity of the foreigner has not been secured contrary to a previously existing obligation. The Federal Office may use the means of administrative compulsion to encourage the foreigner to fulfil his or her duties to cooperate. If the foreigner does not comply or does not fully comply with the duties to cooperate, the Federal Office may decide on the basis of the files, provided that

1. the failure to cooperate was not immediately rectified, or
2. the foreigner has violated the duty to cooperate without sufficient excuse.

In the case of a decision on the basis of the files, all relevant facts and circumstances shall be taken into account for the decision on revocation or withdrawal pursuant to this provision or pursuant to Section 48 of the Administrative Procedure Act. Furthermore, the extent to which the foreigner has fulfilled his obligations to cooperate shall be taken into account. The foreigner shall be informed by the Federal Office of the content and scope of his or her duties to cooperate in accordance with this provision and of the legal consequences of a violation.”

Section 73 subs. 4 sentence 1 of the Asylum Act has also been revised and now provides for it:

“In cases in which the Federal Office has not issued a request pursuant to subs. 3a, the foreigner must be notified in writing of the intended deci-

sion on revocation or withdrawal pursuant to this provision or pursuant to Section 48 of the Administrative Procedure Act and given the opportunity to make a statement.”

The reasons for this bill say that the Asylum Act foresaw “extensive obligations” to cooperate during the asylum application procedure, “however, not any obligations to cooperate during revocation or withdrawal procedures pursuant to Section 73 of the Asylum Act” (Deutscher Bundestag 2018a: 8). As a result, the Federal Office for Migration and Refugees was (as described above) “dependent on information gained by the security and foreigners authorities or the foreigners’ willingness to cooperate in revocation and withdrawal procedures” (Deutscher Bundestag 2018a: 10). The amendment, on the other hand, enshrines the obligation to cooperate, which is also applicable in revocation procedures based on travel to the country of origin and/or contacts with the authorities of the country of origin, and oral or written cooperation can now be required and enforced by administrative compulsion. The duty to cooperate also applies if the person concerned is represented by an authorised representative (Section 15 subs. 1 sentence 2 of the Asylum Act). The obligations to cooperate include, among other things, providing the necessary information orally and, upon request, also in writing, presenting, handing over and surrendering the passport or passport replacement as well as all necessary certificates and other documents¹⁵ and tolerating the required identification measures (Section 15 subs. 2 nos. 1, 4, 5 and 7 of the Asylum Act).

The amendments to the obligations to cooperate “will help to review the asylum decisions taken under considerable stress against the background of migration developments in 2015 and 2016 in particular and thus to calm the political discussions about these decisions” (Deutscher Bundestag 2018a: 8). The BAMF is preparing for a high number of such regular revocation reviews. According to the President of the Federal Of-

¹⁵ The certificates and other documents required include, in particular, certificates and documents which, in addition to the passport or passport replacement, may be of significance for establishing identity and nationality, visas issued by other states, residence permits and other border crossing documents, air tickets and other driving licenses, documents on the travel route from the country of origin to the territory of the Federal Republic of Germany, the means of transport used and the stay in other states after departure from the country of origin and before entry into the Federal territory as well as all other certificates and documents on which the foreigner relies or which are of importance for the decisions and measures under asylum and aliens law to be taken, including the determination and assertion of the possibility of return to another state (Section 15 subs. 3 of the Asylum Act).

fice for Migration and Refugees Hans-Eckhard Sommer, the Federal Office will have to review more than 773,000 asylum decisions¹⁶ by the end of 2020: “This is a ‘hitherto unique’ challenge, of which it is to be feared that all resources could concentrate on revocation procedures during this period. In this situation, the planned introduction of an obligation to cooperate on the part of those affected is an ‘important and target-oriented contribution’ of ‘extraordinary importance’ for the work of the Federal Office for Migration and Refugees” (German Bundestag 2018b).

The UNHCR commented on the planned introduction of cooperation obligations that “although the Geneva Convention does not regulate the withdrawal of the decision on refugee protection, it is not the purpose of the Convention to grant international protection to persons who do not need it because they do not fulfill the conditions. In the interests of the integrity of refugee protection within the meaning of the Refugee Convention, the withdrawal of incorrect decisions to grant protection is therefore in accordance with the aim and purpose of the Convention. However, revoking and withdrawal decisions are in tension with the principle of legal certainty required under international law and, under certain circumstances, with the protection of legitimate expectations. Therefore, the reasons for a revocation or withdrawal of an originally incorrect decision should be proven, the consequences of a revocation or withdrawal should not be disproportionate and the procedure should satisfy the requirement of fairness” (UNHCR 2018: 2).

The German Bar Association, in turn, criticised the bill in a statement to the effect that the legislator was attempting to “detect and, if necessary, rectify alleged errors by the Federal Office for Migration and Refugees that could have led to a decision in the initial asylum procedure that was favourable for those affected – recognition as entitled to asylum, granting of international protection or determination of a ban on removal. In some cases, it goes beyond the framework set by the Qualifications and Asylum Procedures Directives. In addition, the draft law leaves it unclear when coercive measures are permitted, so that such measures are subject to constitutional reservations” (Deutscher Anwaltverein 2018: 2).

16 “For 2018 and 2019, a total of 550,864 procedures are to be reviewed, of which 191,678 procedures are to be accounted for by the quantity of early procedures and 359,186 by the quantity of regular revocation reviews. The review of 59,310 procedures has already been completed. In only 349 (0.6%) and (0.2%) of the proceedings was the decision revoked or withdrawn” (BAMF 2018b: 1 et seq.).

3.3 Notifications and procedures within incident-related reviews once the authorities learn of a travel to and/or contact with the authorities of the country of origin

Before and after the regular revocation review takes place an incident-related review may also take place. Such incidents may be the that the authorities are informed about a deception regarding the identity in the asylum procedure, safety-relevant findings and crimes of the person in question or those incidents central for this study, travels to the country of origin or contact with authorities of the country of origin

A revocation procedure on the grounds of a travel to or contact with the authorities of the country of origin can only be initiated if the authorities learn of such a travel or contact with the authorities (Chapter 3.3.1 and 3.3.2; see Figure 4). This means that firstly, an official authority needs to learn of this travel or contact with the authorities, which then again informs the Federal Office for Migration and Refugees accordingly. Only then can a revocation procedure and an examination of the circumstances be started. This procedure will also involve the foreigners authorities and the security authorities. The beneficiary of protection in question again will be given time to comment on the issue in writing (Chapter 3.3.3-3.3.8; see Figure 5).

3.3.1 Learning about a travel to the country of origin

In most cases, the Federal Police (BPOL) learns about beneficiaries of protection travelling to their country of origin when the passports are controlled (see Figure 4). This mainly takes place at the passport checks at the airports, but sometimes also within the framework of police checks on cross-border traffic, such as at harbors or in conjunction with the temporary border controls at the German Austrian border, which were introduced again in autumn 2015, or in the context of case-related checks. If the travel documents show that a beneficiary of protection who is living in Germany has travelled to his or her country of origin, the Federal Police informs the Federal Office for Migration and Refugees of this fact.

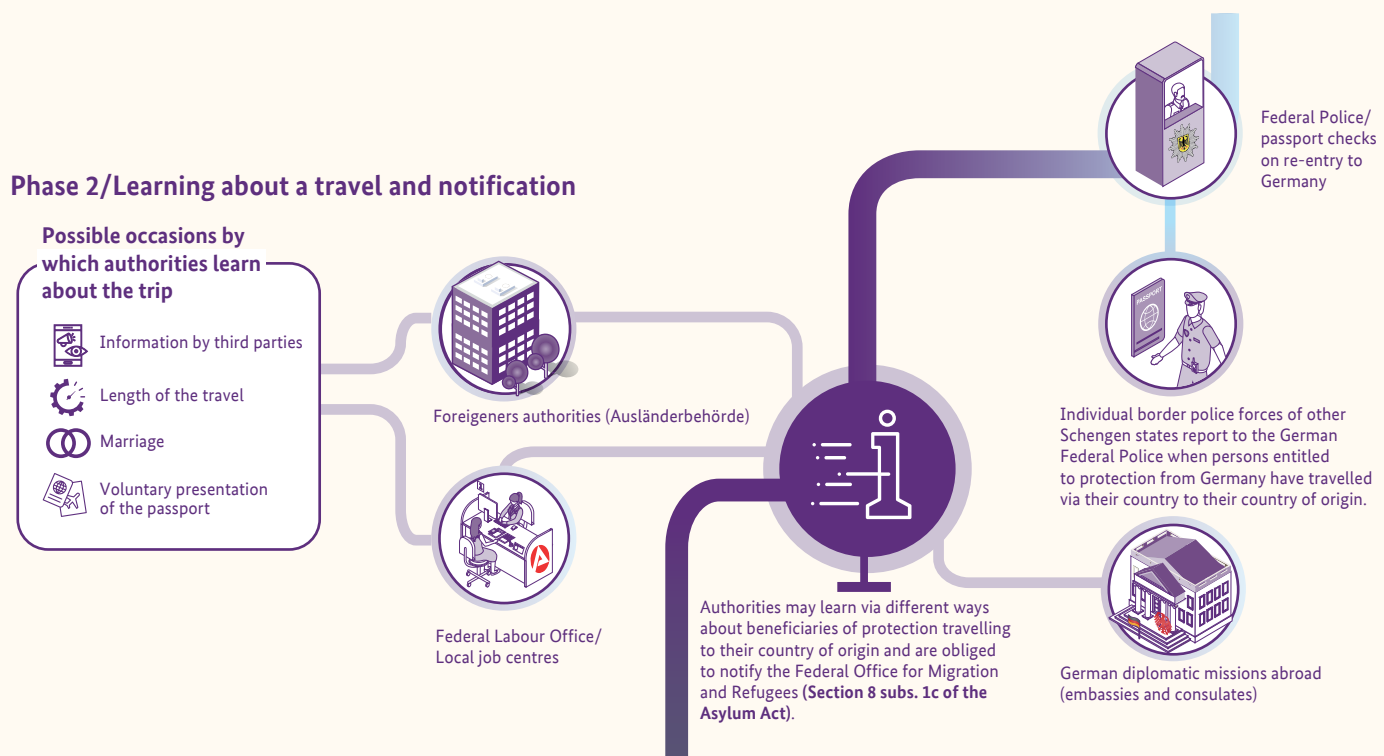
If the beneficiary of protection does not travel directly from a German airport, but from another Schengen state to his or her country of origin, his or her passport is not controlled in Germany, but in that Schengen state. In this case, the German authorities will not automatically learn about the travel to the country of origin. There is no general notification system or common database for this purpose. However, the border polices of some of the Schengen states pass on such information on the basis of bilateral cooperation agreements between the countries and their authorities. Such cooperation agreements between the German authorities and the border polices of other countries and individual airports have been expanded in the last few years. They ensure that the border polices of other Schengen states inform the Federal Police when a beneficiary of protection who lives in Germany travels to his or her country of origin. In the same way, the Federal Police informs the cooperating authorities in other countries.

The foreigners authority who is responsible for the beneficiary of protection may also learn about a travel to the country of origin (see Figure 4). However, the foreigners authorities do not systematically check the passports of beneficiaries of protection for passport stamps of the country of origin. According to the Land government of Baden-Württemberg, “ordering the

Land’s foreigners authorities to check all German passport substitutes for stamps of the country of origin or neighbouring countries without a specific reason to do so would be disproportionate” (Landtag Baden-Württemberg 2016: 8). Nevertheless, the foreigners authorities may learn via different ways about a beneficiary of protection travelling to his or her country of origin, for example via “a notification by the Federal Police or authorities of other Schengen states, information by third parties, voluntary presentation of the passport to the foreigners authority, inattention of the foreigner versus the foreigners authority, presentation of the passport to another authority (e.g. the civil registry office for a marriage or the job centre) and information by that authority, police arrests, information by refugee workers” (Landtag Baden-Württemberg 2016: 6).

The job centres may learn about a travel to the country of origin if unemployed beneficiaries of protection who touch benefits pursuant to Social Code Books II or III leave the adequate perimeter for more than the three weeks that are allowed (see Chapter 2.3.1). If, when examining the circumstances of this absence, a job centre learns about a travel to the country of origin, it usually informs the foreigners authority and not the Federal Office for Migration and Refugees. In turn, the foreigners authority informs the Federal Office for Migration and Refugees (see Chapter 3.3.2).

Figure 4: Learning about a travel to the country of origin



Source: Whole infographic on pages 40/41; © Burak Korkmaz

German diplomatic missions abroad (embassies and consulates) may also learn about a travel to the country of origin, for example because the beneficiaries of protection try to make contact in or from their countries of origin or from the neighbouring countries.

3.3.2 Notification of the Federal Office for Migration and Refugees by other authorities

After the ‘Act to Improve the Enforcement of the Obligation to Leave the Country’ entered into force on 29 July 2017, all institutions which provide basic income to jobseekers, the authorities which are responsible for policing cross-border traffic and the German diplomatic missions abroad are obliged to notify the Federal Office for Migration and Refugees “if they learn about a person entitled to asylum or beneficiary of international protection [...] travelling to his or her country of origin” (Section 8 subs. 1c of the Asylum Act).

The Federal Office for Migration and Refugees is usually notified by e-mail or, in some cases, by a phone call. If the Federal Police is the notifying authority, the personal data, passport data, travel route information and flight data (including the length of stay in the country of origin) are included in the e-mail. The Federal Police does not ask about the reasons for the travel to the country of origin, which means that the data only provide factual information. It is the Federal Office for Migration and Refugees which examines the reasons for the travel.

3.3.3 Initiation of a revocation procedure

Once the Federal Office for Migration and Refugees receives a notification, it starts an examination procedure (see Figure 5). The first step is to create a revocation file for the foreigner. At the same time, a questionnaire is sent automatically to the responsible foreigners authority and the security authorities (same procedure as in the regular revocation procedure). The foreigners authorities are asked to provide up-to-date information and additional facts which may be specific to and relevant for a revocation procedure. The security authorities are asked for information about any security-relevant events which may be relevant during the revocation procedure. The authorities are given one month to respond. The security authorities only respond if they have relevant information at their

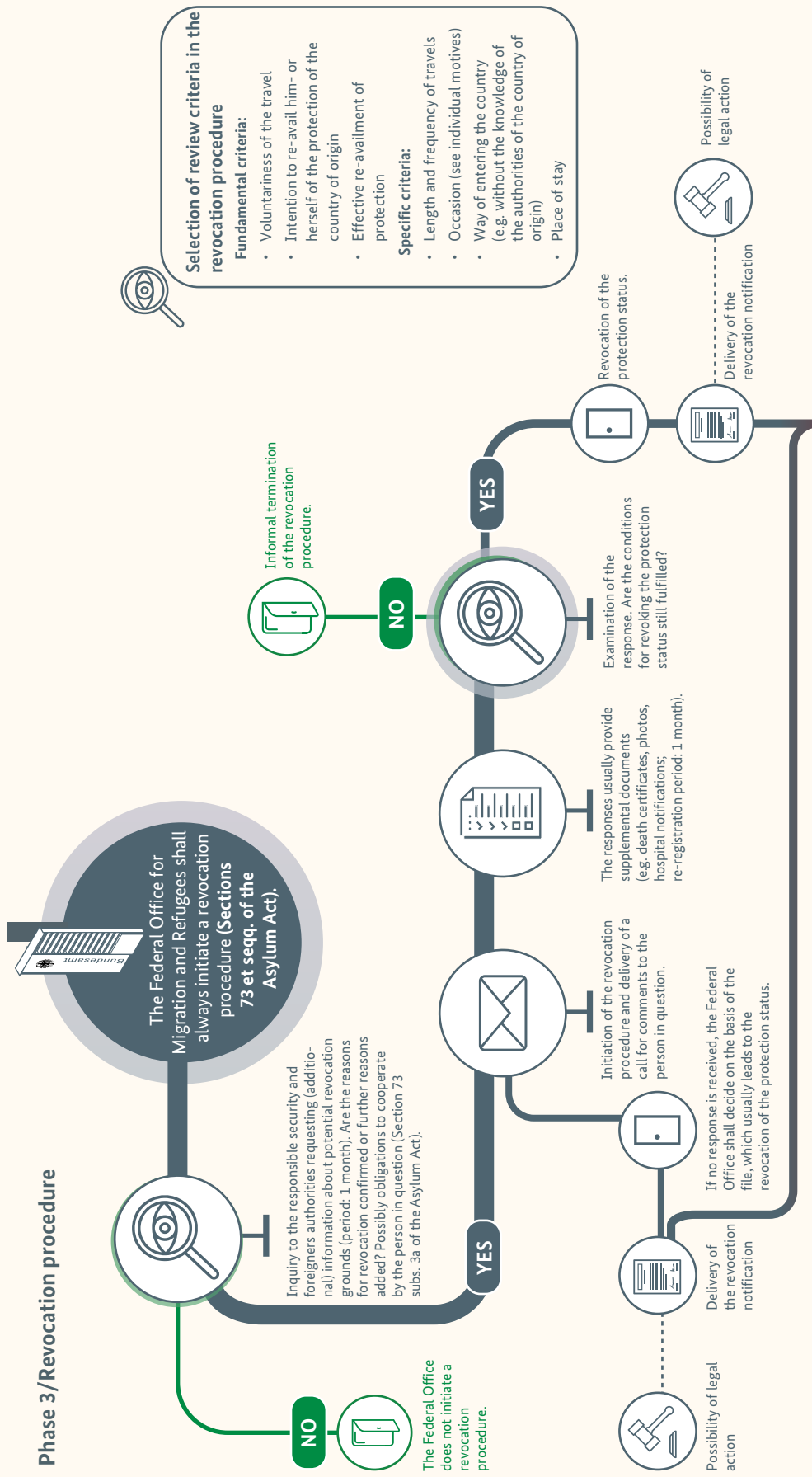
disposal. During this procedure, the Federal Office for Migration and Refugees may learn of facts which are relevant for a revocation and may result in a revocation regardless of the travel to the country of origin (such as criminal court proceedings against the foreigner).

The enquiries to the foreigners and security authorities are part of an automatic procedure, which is independent of any concrete reason for revocation. They also take place during a regular review of the protection status after three years, which does not need to have a specific reason (such as information about the beneficiary of protection travelling to his or her country of origin).

If the enquiry to the authorities yields additional information which suggests that there are plausible reasons for the travel to or the contact with the authorities of the country of origin and that the beneficiary of protection does not intend to re-avail him- or herself of the protection of the country of origin, the Federal Office for Migration and Refugees can decide not to start a formal revocation procedure at this point. If, however, the enquiry does not bring up any exonerating information or yields additional incriminating evidence (also independent of the travel or contact to authorities, such as in regard to ongoing lawsuits), the Federal Office for Migration and Refugees will start the formal revocation procedure based on the initial information about the travel to the country of origin or on the new or supplemental evidence provided by the foreigners or security authorities.

The foreigner is informed in writing against proof of delivery of the fact that the Federal Office for Migration and Refugees intends to revoke the protection status (Section 73 subs. 4 first sentence of the Asylum Act). The letter contains specific information about the Federal Office’s knowledge of the travel to the country of origin or other grounds for revocation and the conclusion that the person in question is apparently not a victim of persecution in his or her country of origin anymore and seems to have re-availed him- or herself of the protection of his or her country of origin.

Figure 5: The revocation procedure in Germany



Source: Whole infographic on pages 40/41; © Burak Korkmaz

3.3.4 Revocation procedures “without delay” on grounds of travels to and contact with the authorities of the country of origin

Pursuant to Section 73 subs. 1 first sentence of the Asylum Act, the recognition of refugee or asylum status is to be revoked without delay if the conditions on which it is based have ceased to exist. This means that, in principle, the Federal Office for Migration and Refugees has to start the revocation procedure immediately after facts come to light which suggest that the conditions may have ceased to exist. Due to the high number of protection seekers who came to Germany in 2015 and 2016 in particular the Federal Office for Migration and Refugees was temporarily unable to complete all procedures and tasks in a timely manner. This situation has been resolved by new staff, prioritisation procedures and a number of measures to streamline procedures (Grote 2018). The focus has been on asylum procedures and, in 2017 and 2018, on regular revocation reviews. In fact, more staff have been allocated to the Revocation Procedure Division. As a result, it is possible to examine information about a travel to the country of origin during the regular review even if this travel has taken place some time before. The Federal Administrative Court has consistently ruled that the immediacy requirement applies exclusively in the public interest, which means that the foreigner's rights are not infringed by any violation of this requirement (BVerwG 2006: 1 C 15.05). This means that the Federal Office for Migration and Refugees may, under certain circumstances, rely on information about lacking conditions for the recognition of asylum or refugee status at a later date, however, at the latest after the three-year period. According to the Federal Office for Migration and Refugees, the upcoming regular review of hundreds of thousands of cases may yield indications of travelling to or contact with the authorities of the country of origin which have not been finally processed or examined yet. This applies above all to cases started and notifications given before mid-2018. Since then, any new indications of travels to or contacts with the authorities of the country of origin tend to trigger a revocation procedure without delay.

3.3.5 Opportunity to respond for the beneficiary of protection

After having received the letter by the Federal Office for Migration and Refugees, the beneficiary of protection has one month to respond in writing (Section 73

subs. 4 second sentence of the Asylum Act). In the experience of the Federal Office for Migration and Refugees, beneficiaries of protection often tend to go to a lawyer at this point who then represents them versus the Federal Office for Migration and Refugees.

The responses by the lawyers usually explain the reasons for the travel to the country of origin and provide supplemental documents, such as – depending on the reason for the travel – newspaper obituaries, death certificates, photos taken at the funeral, hospital notifications or transfers, other proof of the urgency of the stay or similar documents. The extent and the details of the explanations may differ considerably. Of course, the examination takes into account that certain documents are not usually provided in certain regions or were impossible to obtain under the circumstances. If the person in question entered the country of origin via neighbouring countries or if his or her entry was not documented by the authorities of the country of origin, it may make sense to describe the route of travel. This route may be examined for plausibility jointly with diplomatic missions or specialist divisions at the Federal Office for Migration and Refugees.

There is usually no personal interview to check the claims; however, a personal interview may be conducted and has taken place in individual cases in the past. In this case, the Revocation Procedure Division at Nuremberg asks the branch office of the Federal Office for Migration and Refugees at the beneficiary's place of residence to conduct the interview in consultation with the Revocation Procedure Division. However, until the completion of this study, the attendance at such personal interviews was voluntary for the person in question.

As mentioned above, on December 12, 2018 the Third Act Amending the Asylum Act entered into force which introduced additional obligations to cooperate during the revocation procedure. While this will above all apply to the regular review, it may also apply to the incident-related revocation procedures described in this study (see Chapter 3.2; Deutscher Bundestag 2018a).

3.3.6 Examination of the response

After having received the response of the beneficiary of protection in time, the Federal Office for Migration and Refugees examines the additional documents for authenticity and the individual motives for plausibility, taking into account the fundamental factors (such as

length and place of stay, voluntariness, type of contact with government authorities of the country of origin). The Federal Office for Migration and Refugees examines whether the facts and the evidence, which is often submitted, sum up to a re-availment of the protection of the country of origin or not. If the beneficiary of protection does not respond within the foreseen period, the Federal Office for Migration and Refugees will decide on the basis of the indications as it stands (Section 73 subs. 4 third sentence of the Asylum Act). As a rule, this will result in a revocation of the protection status.

3.3.7 Delivery of the revocation notification

If the protection status is revoked, the Federal Office for Migration and Refugees will write a revocation notification, which will be proofread by a second employee for quality reasons and other random quality checks are implemented. While appreciating the initial asylum procedure the notification gives an overview of the initial facts of the case, which led to the initiation of the revocation procedure, and the response of the beneficiary of protection. The notification will be dispatched to the beneficiary of protection or his or her lawyer and a copy is sent to the foreigners authority. The Federal Office for Migration and Refugees will also check whether there are family members (pursuant to Section 26 of the Asylum Act) whose right to asylum or recognition as a refugee is derived from that of the original beneficiary of protection and/or whether the conditions for a revocation of their status and the initiation of a revocation procedure pursuant to Section 73 subs. 2b of the Asylum Act are in place, too.

If the examination finds that there is no reason for a revocation, the Federal Office for Migration and Refugees will inform the beneficiary of protection or his or her lawyer and the foreigners authority in writing of the informal termination of the revocation procedure.

3.3.8 Appeal against the revocation of protection

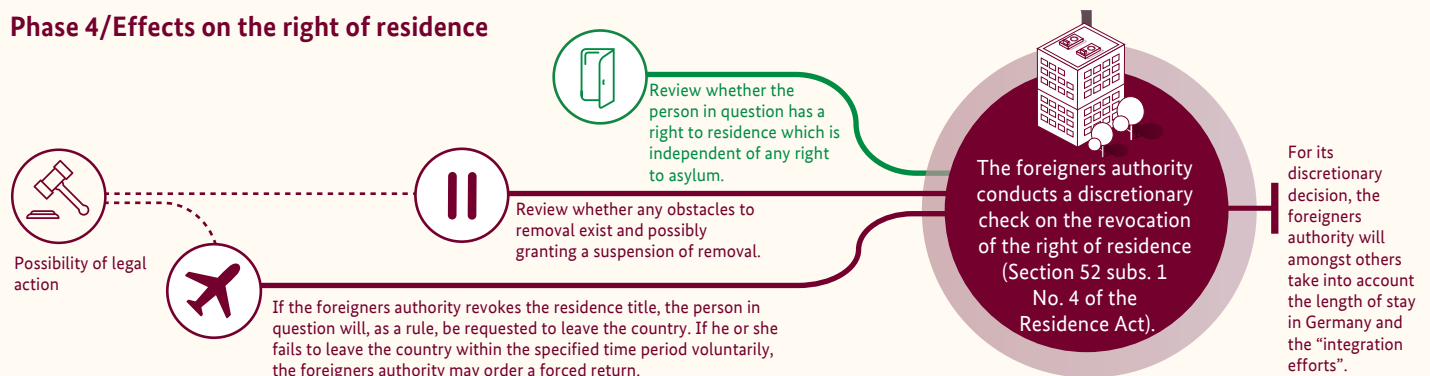
The beneficiary of protection can file an appeal against the revocation notification with the responsible administrative court once he or she has been informed properly about available legal remedies.

3.4 Effects of the revocation on the right of residence

Once the revocation of protection status by the Federal Office for Migration and Refugees has become unappealable or immediately enforceable, the former beneficiary of protection has to return his or her notification of recognition and his or her travel document to the foreigners authority (Section 72 subs. 2 and Section 73 subs. 6 of the Asylum Act). “If the foreigner refuses to do so, the return will be enforced by administrative enforcement” (52.1.4.1. of the General Administrative Regulation to the Residence Act).

The revocation of the protection status does not automatically imply a loss of the residence title or a termination of the stay in Germany (see Figure 6). While a revocation of the protection status (be it the recognition as refugee or entitlement of asylum or subsidiary protection) may result in the revocation of a residence title (Section 52 subs. 1 no. 4 of the Residence Act), the responsible foreigners authority will, after having received the revocation notification by the Federal Office for Migration and Refugees, first conduct a discretionary check whether the conditions for a revocation are met. In doing so, it “may assume that there is a significant public interest in the revocation” (Bergmann/Dienelt/Bauer/Dollinger 2018: Residence Act Section 52 margin no. 15).

For its discretionary decision, the foreigners authority will take into account the length of stay in Germany and the “integration efforts” (Müller 2016: Asylum Procedure Act Section 72 margin no. 26-27) and “all circumstances of the individual case, including **those which call for particular protection**, and above all the beneficiary’s justified interest in staying in Germany” (Möller 2016: Residence Act Section 52 margin no. 22; emphasis in the original). The determination of circumstances which call for particular protection is based on Section 53 subs. 2 and Section 55 of the Residence Act (Bergmann/Dienelt/Bauer/Dollinger 2018: Residence Act Section 52 margin no. 15). These include “the length of legal stay, the foreigner’s personal, economic and other ties in the federal territory, the consequences of the revocation for family members and life partners and reasons to suspend removal, if any. [...] In addition, old age, illness or inability to work, which will regularly make the reintegration in the country of origin more difficult or render it impossible, and other reintegration hurdles may be important issues for a revocation decision. Social, cultural or professional **integration** need to be taken into account as well. If the foreigner has committed one or

Figure 6: Effects of the revocation on the resident status**Phase 4/Effects on the right of residence**

Source: Whole infographic on pages 40/41; © Burak Korkmaz

more criminal offences, the foreigners authority may not only consider the number of criminal offences, but also their type and the time at which they were committed in order to examine the future potential danger posed by the foreigner" (Möller 2016: Residence Act Section 52 margin no. 22; emphasis in the original).

In addition, the foreigners authority checks whether the person in question has a right to residence which is independent of any right to asylum. A revocation of the residence title is not permitted if "the foreigner already held an equivalent residence title before being recognised as a person entitled to asylum or refugee or if he or she has a right to such a residence title for another legal reason (example: while the recognition as a person entitled to asylum was revoked, the foreigner has married in the meantime and has now a right to being granted a residence title pursuant to Sections 27 et seq. [of the Residence Act; subsequent immigration of dependants]). In the first case, the initially granted residence title was overshadowed by the residence title granted to ensure protection from persecution; in the second, revoking the residence title would violate the prohibition on contradictory behaviour, which stems from the principle of good faith" (Möller 2016: Residence Act Section 52 margin no. 22).

If a former beneficiary of protection held a permanent settlement permit before the protection status was revoked, the "residence status of the foreigner (see, for example, the conditions for the subsequent immigration of dependants) may result in his or her being granted a residence permit, provided that he or she meets the substantial conditions for this permit. In this case, no measures to terminate his or her stay shall be taken" (52.1.4.6. of the General Administrative Regulation to the Residence Act). If, after having reviewed these conditions, the foreigners authority revokes the

residence title, the person in question will, as a rule, be requested to depart. If he or she fails to depart within the specified time period, the foreigners authority may order a forced return (Hoffmeyer-Zlotnik 2017: 22).

The person in question may also lodge an appeal against the notification of the revocation of the residence title with the responsible administrative court.

3.4.1 Consequences of a revocation for family members

The revocation of protection status by the Federal Office for Migration and Refugees and subsequent revocation of the residence permit by the responsible foreigners authority may result in the residence titles of family members being revoked as well, unless they have an independent right to a residence title (Section 52 subs. 1 second sentence of the Residence Act). Spouses or civil partners (Section 31 of the Residence Act) or children (Section 26 subs. 3 of the Residence Act) may, for example, have an independent right to a residence title.

4 Conclusion

There may be numerous reasons why beneficiaries of protection decide to travel to or contact the authorities of their country of origin. Once the German authorities learn of such an event, they initiate a revocation procedure to examine whether the conditions for granting protection are still in place or whether the person in question has re-availed him- or herself of the protection of the country of origin and no longer needs the protection of the host country. Court decisions from the past, some of them by the highest available courts, on appeals against the cessation of protection status (today revocation in regard to travels to the country of origin and contact to the authorities) show that beneficiaries may temporarily return to their country of origin for family obligations or other urgent reasons even though they are still at risk of being persecuted. In these cases, they have not re-availed themselves of the protection of the country of origin, which means that a revocation of the protection status was not justified. Other court decisions hold up the revocation of the protection status by the Federal Office for Migration and Refugees or the cessation of protection status by the foreigners authorities on the grounds of travels to the country of origin and/or contact with the authorities of the country of origin. In these cases, the courts confirmed that the person in question had re-availed him- or herself of the protection of the country of origin by his or her actions and thus did not need the protection of the Federal Republic of Germany any more.

The circumstances of travels or contact with the authorities may be complex and must be examined individually. This is also set out in the European Asylum Procedure Directive, which has been binding in a national context since the end of July 2015. In Germany, travelling to the country of origin or contacting the authorities of the country of origin form grounds of cessation under national law pursuant to Section 72 of the Asylum Act. However, as an automatic administrative act, cessation is not in line with the provisions of the Asylum Procedure Directive any more. Instead, travels and contacts with the authorities now trigger a revocation procedure at the Federal Office for Migration and Refugees pursuant to Sections 73, 73a, 73b and 73c of the Asylum Act. Just as in the asylum procedure, a mistake by the Federal Office by Migration and Refugees during the revocation procedure may result in the beneficiary of protection getting into an

emergency situation or becoming a victim of persecution in his or her country of origin. That is why the staff at the Federal Office for Migration and Refugees need to take particular care when examining the circumstances of a travel or of contact with the authorities.

The issue has come into the foreground in bi- and tri-lateral discussions and at the European level in 2018, and administrative cooperations have been extended. This applies in particular to exchanging information about persons who, after having been granted protection in a European country, travelled to the country of origin from an airport in another country. Cooperation between the national border polices and airports is being improved.

International co-operation in terms of notifications has improved, the number of staff in the Revocation Procedure Division at the Federal Office for Migration and Refugees was considerably increased, certain revocation procedures are to be outsourced to the branch offices of the Federal Office for Migration and Refugees and, as of July 2017, other authorities are obliged to inform the Federal Office for Migration and Refugees if they learn that beneficiaries of protection have travelled to their countries of origin. All this will lead to a significant increase in the number of revocation procedures on the grounds of travels to the country of origin or contact with the authorities of the country of origin in the coming years. Since there is currently no detailed documentation of the numerous reasons for revocation, it will remain impossible, however, to make reliable statements about the number of travels to the country of origin.

Moreover, the number of revocation procedures is not equal to that of the number of trips abroad by beneficiaries of protection. First, the German authorities do not learn about all travels of beneficiaries of protection to their country of origin (for example because they travel from another country), and second, the Federal Office for Migration and Refugees does not initiate a revocation procedure in every case. It may refrain from doing so if a foreigners authority already has obtained plausible information about the reasons for the travel and if the examination of the general and specific circumstances shows that the person in question did not plan to settle in the country of origin, ur-

gent personal reasons (such as a death in the family) were behind the travel or there are reasons to assume that the travel was not undertaken voluntarily. In addition, the number of revocation procedures is not equal to that of actual revocations or court decisions in appeals procedures against a revocation. And finally, it is necessary to distinguish between the revocation of the protection status and the revocation of the residence title. While the Federal Office for Migration and Refugees is responsible for the former, the foreigners authorities will examine the conditions for a revocation of the residence title at their discretion after the protection status has been revoked.

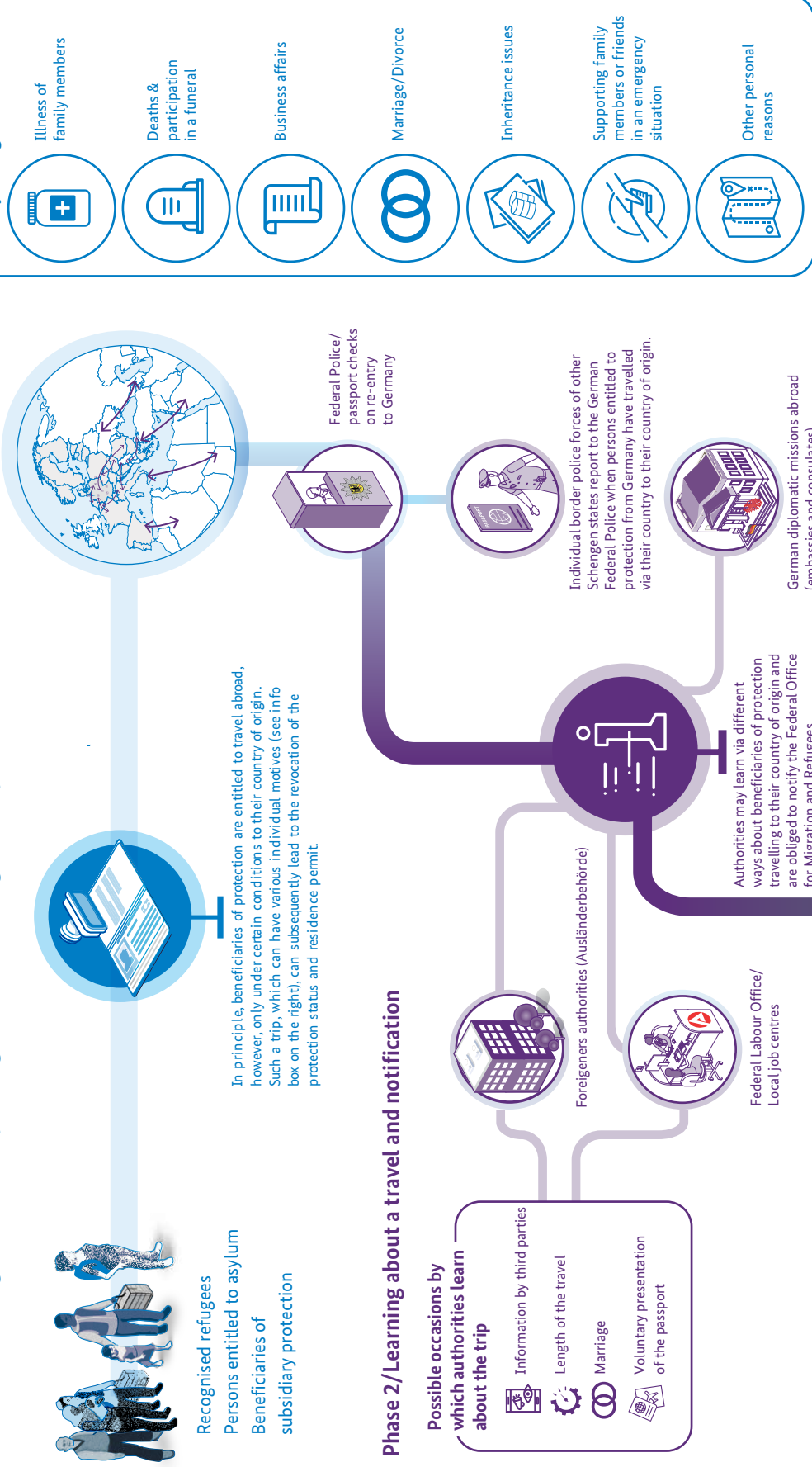
Infographic “Beneficiaries of protection travelling to their country of origin”

The infographic shown on pages 40/41 provides an overview of the single phases of travels to the country of origin of beneficiaries of protection and the possible consequences on the protection and residence status. The infographic itself may be downloaded separately from the website of the German National Contact Point of the EMN: www.emn-deutschland.de

Beneficiaries of protection travelling to their country of origin

Authorization, Policies and Revocation Procedure in Germany

Phase 1/Travelling to the country of origin and re-entering Germany



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List of Abbreviations

Abbreviation	German	English
AfD	Alternative für Deutschland	Alternative for Germany
Approx.		Approximately
AsylG	Asylgesetz	Asylum Act
AsylVfG	Asylverfahrensgesetz (neu: AsylG – Asylgesetz)	Asylum Procedures Act (new: Asylum Act)
AuslR	Ausländerrecht	Aliens law
Az.	Aktenzeichen	Reference number
AZR	Ausländerzentralregister	Central Register of Foreigners
BA	Bundesagentur für Arbeit	Federal Employment Agency
BAMF	Bundesamt für Migration und Flüchtlinge	Federal Office for Migration and Refugees
BayVGH	Bayerischer Verwaltungsgerichtshof	Higher Administrative Court of Bavaria
BMI	Bundesministerium des Innern, für Bau und Heimat	Federal Ministry of the Interior, Building and Home Affairs
BpB	Bundeszentrale für politische Bildung	The Federal Agency for Civic Education
BPOL	Bundespolizei	Federal Police
BVerwG	Bundesverwaltungsgericht	Federal Administrative Court
EC		European Community
EMARK	Entscheidungen und Mitteilungen der Schweizerische Asylrekurskommission (ARK)	Leading decisions of the Swiss Asylum Appeal Board
EMN	Europäisches Migrationsnetzwerk	European Migration Network
Et seq.		Et sequentes (and the following (pages))
EU	Europäische Union	European Union
EZAR	Entscheidungssammlung zum Zuwanderungs-Asyl und Freizügigkeitsrecht	Collection of Decisions on Immigration, Asylum and Freedom of Movement
Ibid.		Ibidem (there)
InfAuslR	Informationsdienst Ausländerrecht	Information service on aliens law
IRQ	Irak	Iraq
n.d.		No date
NGO		Non-Governmental-Organization

Nieders. OVG	Niedersächsisches Oberverwaltungsgericht	Higher Administrative Court of Lower Saxony
No.		Number
NRW	Nordrhein-Westfalen	North-Rhine Westphalia
OVG NRW	Oberverwaltungsgericht des Landes Nordrhein-Westfalen	Higher Administrative Court of North Rhine-Westphalia
SMBI NRW	Ministerium des Innern des Landes Nordrhein-Westfalen	Ministry of the Interior of North Rhine-Westphalia
Subs.		Subsection
SYR	Syrien	Syria
UNHCR		United Nations High Commissioner for Refugees
VG	Verwaltungsgericht	Administrative Court
VGH BW	Verwaltungsgerichtshof Baden-Württemberg	Higher Administrative Court of Baden-Wuerttemberg
Vs.		Versus (as opposed to)

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